SUPREME COURT, U. S.

APPENDIX

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1878

SUSAN EPPERSON and H. H. BLANCHARD, Appellants,

v.

STATE OF ARKANSAS, Appellee.

APPEAL FROM THE SUPREME COURT OF ARKANSAS

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

NO. 749

SUSAN EPPERSON and H. H. BLANCHARD, Appellants,

v.

STATE OF ARKANSAS, Appellee.

APPEAL FROM THE SUPREME COURT OF ARKANSAS

APPEAL DOCKETED OCTOBER 20, 1967
PROBABLE JURISDICTION NOTED MARCH 4, 1968

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APPENDIX.

In the
SUPREME COURT OF THE UNITED STATES.

October Term, 1967.

CHRONOLOGICAL LIST OF THE IMPORTANT DATES ON WHICH PLEADINGS WERE FILED, HEARINGS HELD AND ORDERS ENTERED.

1. December 6, 1965 (Epperson complaint filed in Chancery Court of Pulaski County, Arkansas).

2. December 16, 1965 (Answer of Attorney General, State of Arkansas).

3. January 12, 1966 (Order of Pulaski Chancery Court permitting Intervention of Blanchard).

4. January 12, 1966 (Intervention of H. H. Blanchard, Jr.).

5. March 7, 1966 (Separate Answer of Little Rock School District).

6. March 13, 1966 (Response of Susan Epperson to Amendment to Answer by Attorney General).

7. March 16, 1966 (Amendment to Answer of State of Arkansas).

8. March 18, 1966 (Separate Answer of Attorney General to Blanchard Intervention).

9. March 18, 1966 (Epperson Motion to Confine Testimony and Limit Issues).

10. March 21, 1966 (Motion by Attorney General to Make More Definite and Certain).

11. March 22, 1966 (Response of Epperson to Motion to Make More Definite and Certain).

12. April 2, 1966 (Trial of cause by Pulaski Chancery Court).

13. May 27, 1966 (Memorandum Opinion of Pulaski Chancery Court).

14. June 16, 1966 (Decree of Pulaski Chancery Court).

15. June 21, 1966 (Notice of Appeal to Supreme Court of Arkansas).

16. June 5, 1967 (Per Curiam Opinion, Supreme Court of Arkansas).

17. June 5, 1967 (Concurrence of Associate Justice Paul Ward).

18. June 5, 1967 (Judgment of Reversal of Arkansas Supreme Court).

19. June 18, 1967 (Petition and Brief of Appellees for Rehearing before Arkansas Supreme Court).

20. July 26, 1967 (Order of Supreme Court of Arkansas Denying Petition for Re-hearing).

21. September 25, 1967 (Notice of Appeal to the Supreme Court of the United States).

In the
SUPREME COURT OF ARKANSAS.

STATE OF ARKANSAS, Appellant,

v. No. 5-4127

SUSAN EPPERSON, ET AL., Appellee.

Appeal From the Chancery Court of Pulaski County, Arkansas, First Division.

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[2] In the
CHANCERY COURT OF PULASKI COUNTY.

SUSAN EPPERSON, Plaintiff,

vs. No. 131575

W. C. McDONALD, RUSSELL MATSON, WARREN BASS, JAMES M. COATES, DR. JOHN A. HARRELL and MRS. FRANK GORDON, as Directors of Little Rock School District, and FLOYD PARSONS, as Superintendent of Schools, Defendants.

COMPLAINT.

I.

Plaintiff is a citizen and resident of Little Rock, Pulaski County, Arkansas. Plaintiff is a teacher by profession having a M. S. degree and presently is teaching science at Little Rock Central High School in the Little Rock School District under a teaching contract entered into between the plaintiff and the Directors of the Little Rock School District and approved by the Superintendent of Schools of the Little Rock School District.

II.

Defendants W. C. McDonald, Russell Matson, Warren Bass, James E. Coates, Dr. John A. Harrell and Mrs. Frank Gordon are members of the Board of Directors of the Little Rock School [3] District. Defendant Floyd Parsons is Superintendent of Schools of the Little Rock District. Defendants are necessary parties to this action, not because of their individual beliefs or opinions, but because in the performance of their statutory duties they will, unless enjoined by this Honorable Court, abridge plaintiff's constitutional rights, guaranteed to her by the Constitution of the United States and the Constitution of the State of Arkansas.

III.

This is an action for a declaratory judgment authorized by and under the terms of the Arkansas Declaratory Judgment Act, same being Arkansas Statutes 34-2501 through 34-2512.

IV.

As a teacher of science in the public schools of Arkansas, plaintiff conceives it to be her professional duty and responsibility to discuss with her students and to explain to them various and sundry scientific theories and hypotheses so that the student may be educated and enlightened as to all matters pertaining to science. Included in said scientific theories and hypotheses is the concept of evolution known as Darwinism as set forth in the "Origin of the Species" written by Charles Robert Darwin in 1859. Said scientific theory or hypotheses, that man ascended from a lower form of animal life, is a scientific observation and not a religious doctrine. Plaintiff intends to acquaint her students with the facts respecting this theory because plaintiff believes [4] that scholarship cannot flourish in an atmosphere of academic

and intellectual restraint and that teachers and students must be free to inquire, to study, and to evaluate. Plaintiff does not intend to ask or require that said scientific theory or hypotheses be accepted or rejected by the students. Plaintiff believes however that there can be no acceptance or rejection of any theory or hypothesis in the darkness of ignorance.

V.

Arkansas Statutes 80-1627 and 80-1628 prohibit the teaching or discussion of "the theory or doctrine that mankind ascended or descended from a lower order of animals" in the public schools of the State of Arkansas and further provide that in the event said theory or doctrine is taught in the public schools of Arkansas said teacher teaching or discussing said theory or doctrine shall be subject to a fine of $500.00 and dismissal from his or her teaching position. Said Statutes read as follows:

> 80-1627—"Doctrine of ascent or descent of man from lower order of animals prohibited.—It shall be unlawful for any teacher or other instructor in any University, college, Normal, Public School, or other institution of the State, which is supported in whole or in part from public funds derived by State and local taxation to teach the theory or doctrine that mankind ascended or descended from a lower order of animals and commission, or other authority exercising the power to select textbooks for [5] above mentioned educational institutions to adopt or use in any such institution a textbook that teaches the doctrine or theory that mankind descended or ascended from a lower order of animals."
>
> 80-1628—"Teaching doctrine or adopting textbook mentioning doctrine—Penalties—Positions to be va-

cated.—Any teacher or other instructor or textbook commissioner who is found guilty of violation of this act by teaching the theory or doctrine mentioned Section 1 hereof, or by using, or adopting any such textbooks in any such educational institution shall be guilty of a mis-demeanor and upon conviction shall be fined not exceeding five hundred dollars ($500); and upon conviction shall vacate the position thus held in any educational institutions of the character above mentioned or any commission of which he may be a member."

Plaintiff intends to discuss and explain said theory or doctrine to her students notwithstanding the provisions of said statutes and seeks the protection of her constitutional right to do so by this Honorable Court.

VI.

Plaintiff asserts and alleges that Arkansas Statutes 80-1627 and 80-1628, the so called "Monkey Bill" is void and of no effect, being unconstitutional and void as conflicting with plaintiff's constitutional right of freedom of speech as guaranteed [6] by the First and Fourteenth Amendments to the Constitution of the United States and by Article II, Section 6 of the Constitution of the State of Arkansas which provides "the free communication of thoughts and opinions is one of the invaluable rights of man: and all persons may freely write and publish their sentiments on all subjects, being responsible for the abuse of such right". Plaintiff prays the judgment of this Honorable Court declaring such statutes above set out to be unconstitutional and void.

VII.

Plaintiff states that the sponsors of said statutes seek to justify its adoption and enforcement on the grounds that the Darwinian theory is a religious theory contrary

to Christianity. Such assertion is contrary to the facts and erroneous, but as interpreted by said sponsors constitutes action by the State to enter the field of religion which is specifically prohibited by Amendments I and 14 of the Constitution of the United States and Article II, Section 24 of the Constitution of the State of Arkansas.

VIII.

Plaintiff states that unless this Honorable Court enters its judgment and decree holding Arkansas Statutes 80-1627 and 80-1628 unconstitutional and void, plaintiff will be subject to fine and dismissal from her teaching position. Plaintiff states [7] that the defendants will have no alternative but to dismiss plaintiff from her teaching position in the event the provisions of said act are invoked against plaintiff, and prays that this Court enter its order enjoining and prohibiting the defendants from cancelling plaintiff's contract because of the provisions of said statute.

Wherefore, Premises Considered, Plaintiff prays that this Court enter its order;

1. Declaring said Arkansas Statutes 80-1627 and 80-1628 unconstitutional and void,

2. Enjoining said defendants as Directors and Superintendent of the Little Rock School District from cancelling and dismissing Plaintiff's contract to teach school in the public schools of Little Rock because of the provisions of said unconstitutional statutes.

3. For all other relief to which plaintiff may be entitled.

WARREN & BULLION,
By /s/ EUGENE R. WARREN,
Attorneys for Plaintiff.

(Verification omitted.)

[9] Return of the Sheriff of Pulaski County, Arkansas shows service of summons December 7, 1965 on:

Mr. James M. Coates, in person.
Dr. John A. Harrell, in person.
Mr. Floyd Parsons, in person.
Mrs. Frank Gordon, in person.
Russell Matson, in person.
W. C. McDonald, in person.
Warren Bass, in person.

[10] **ANSWER.**

(Formal parts omitted.)

Comes Bruce Bennett, Attorney General, by Dick Adkisson, Chief Assistant Attorney General, and pursuant to Ark. Stat. Ann. S 34-2510 (Repl. 1962) denies each and every material allegation contained in plaintiff's complaint.

Wherefore, tthe Attorney General prays plaintiff's complaint be dismissed and she take nothing herein.

BRUCE BENNETT,
Attorney General,
/s/ DICK ADKISSON,
By: DICK ADKISSON,
Chief Assistant Attorney General.

[12] **DEMURRER.**

(Formal parts omitted.)

The Defendants demur to the Complaint of the Plaintiff for the reason that the Complaint fails to allege sufficient facts, and to state a cause of action, upon which the prayed for or any other proper relief can be granted.

Wherefore, the Defendants pray that the Complaint of the Plaintiff be dismissed; that Defendants recover their costs herein expended; and that Defendants have all other relief to which they may be entitled.

SMITH, WILLIAMS, FRIDAY & BOWEN,
11th Floor, Boyle Building,
Little Rock, Arkansas,
Attorneys for Defendants,
By /s/ HERSCHEL H. FRIDAY,
HERSCHEL H. FRIDAY.

[14] ORDER PERMITTING INTERVENTION.

(Formal parts omitted.)

Hubert H. Blanchard, Jr., is hereby permitted to intervene in the above styled action.

/s/ MURRAY O. REED,
Chancellor.

Dated: 1-12-66.

[15] INTERVENTION OF HUBERT H. BLANCHARD, JR.

(Formal parts omitted.)

Comes Hubert H. Blanchard, Jr., and respectfully praying permission of this Honorable Court files herewith his intervention in the above styled cause and states:

1. Intervenor is a citizen and resident of the State of Arkansas and is a citizen of the United States; he is the father of two sons, age 17 and 15, who are students in the public schools of the State of Arkansas, and for whose benefit intervenor enters this litigation as well as for the

assertion of his constitutional rights as a citizen and parent.

2. Intervenor adopts the allegations in the complaint of the plaintiff in the above styled action as fully and completely [16] as if set out in this intervention.

3. As a parent of students in the public schools of the State of Arkansas, intervenor desires that his children receive the highest quality and most complete education (and educational advantages) provided or which could be provided by the public school systems in the State of Arkansas. Intervenor asserts that to deny his sons the right to be informed of all scientific theories and hypotheses is to deny them access to a complete education so highly desirable for the development of mental capacity and ability; that the guaranties of the 14th Amendment of the Constitution of the United States secure to every citizen of the United States the right to access to all sources of knowledge and learning including the right to be informed of scientific theories or hypotheses irrespective of whether the scientific theories or hypotheses are accepted or believed by a majority or minority of the other citizens of the United States. The Intervenor asserts that the guaranty of freedom of speech provided by both the Constitution of the United States and the Constitution of the State of Arkansas includes the guaranty of the freedom to learn. A complete and satisfactory education requires that scholars be informed of what may not be believable as well as what may be believable and academic freedom to learn demands that the scholar and not a political majority, shall have the right to select what, to him, is believable and what is [17] not believable. The Constitutions of both the State of Arkansas and of the United States secures to every scholar the constitutional right to be informed of all scientific theories and hypotheses and the constitutional right, unrestricted by belief of the

majority, to accept that which he and he alone considers credible and worthy of belief.

Intervenor asserts and alleges that Arkansas Statutes 80-1627 and 80-1628 deny to intervenor's sons the right to be taught and to learn, and in doing so contravenes the guaranties of freedom of speech and freedom to learn secured by the Constitution of the United States and the Constitution of the State of Arkansas. Intervenor asserts that said Statutes are void and of no effect and that this Court should enter its decree declaring said Statutes unconstitutional and void.

Wherefore, premises Considered, Intervenor prays that this Court enter its order declaring Arkansas Statutes 80-1627 and 80-1628 unconstitutional and void.

WARREN & BULLION,
1450 Tower Building,
Little Rock, Arkansas,
By: /s/ EUGENE R. WARREN,
Attorneys for Intervenor.

[19] **SEPARATE ANSWER TO COMPLAINT AND INTERVENTION.**

(Formal parts omitted.)

Come the defendants, W. C. McDonald, Russell Matson, Warren Bass, James M. Coates, Dr. John A. Harrell and Mrs. Frank Gordon, as Directors of Little Rock School District, and Floyd Parsons, as Superintendent of Schools, and for their separate answer to complaint of the plaintiff, Susan Epperson, and the intervention of the intervenor, Hubert H. Blanchard, Jr., state:

1.

Defendants admit the allegations contained in paragraph I of the complaint.

2.

Defendants admit the allegations contained in paragraph II of the complaint with the exception of the statement therein that by performance of their statutory duties as members of the Board [20] of Directors of the Little Rock School District and Superintendent of Schools of the Little Rock School District, respectively, they will, in complying with the laws of this state, abridge any of the plaintiff's constitutional rights as guaranteed to her by the Constitution of the United States or the State of Arkansas.

3.

Defendants admit the allegations contained in paragraph III of the complaint.

4.

Defendants are without sufficient information on which to formulate an answer to the allegations contained in paragraph IV of the complaint and, therefore, deny them.

5.

With reference to paragraph V, defendants admit that Ark. Stats. 80-1627 and 80-1628 are quoted correctly; do not know, and, therefore, deny plaintiff's stated intention to discuss and explain the theory or doctrine of evolution; and deny that plaintiff has a constitutional right to do so.

6.

Defendants deny the allegations contained in paragraph VI of the complaint.

7.

Defendants do not know the intent of the sponsors of Ark Stats. S80-1627 and S80-1628 and deny all allegations of paragraph [21] VII of the complaint.

8.

With reference to the allegations of paragraph VIII of the complaint, defendants will comply with the provisions of Ark. Stats. S80-1627 and S80-1628 as long as they are in force and effect, but, of course, will honor any order of this Court.

9.

With reference to the allegations of the intervention, defendants admit paragraph 1, reassert their answers to the allegations of the plaintiff's complaint adopted by intervenor, and deny the allegations contained in paragraph 3 of the intervention.

10.

All the allegations of the complaint and the intervention not admitted are denied.

Wherefore, defendants pray that the complaint and intervention be dismissed with prejudice, that defendants recover their costs herein expended, and that defendants have all other proper relief.

SMITH, WILLIAMS, FRIDAY & BOWEN,
1100 Boyle Building,
Little Rock, Arkansas,
Attorneys for Defendants.
By /s/ HERSCHEL H. FRIDAY,
HERSCHEL H. FRIDAY.

[23] **MOTION TO MAKE MORE DEFINITE AND CERTAIN.**

(Formal parts omitted.)

Comes now the State of Arkansas in regard to paragraph VII of the complaint in which there is an allegation that "the sponsors of said statutes seek to justify its adoption and enforcement . . . as interpreted by said sponsors constitutes action by the State to enter the field of religion . . ."

Defendant is unable to ascertain from the reading of paragraph VII of the complaint as to who the plaintiff means when she refers to "sponsors" in that the subject act was adopted in 1928.

Wherefore, Premises Considered, the State of Arkansas moves the plaintiff to state specifically by name and address who they refer to as "sponsors" in paragraph VII of the complaint.

By: /s/ BRUCE BENNETT,
BRUCE BENNETT,
Attorney General,
Attorney for Defendant.

[43] **RESPONSE TO FIRST AMENDMENT TO THE STATE OF ARKANSAS' ANSWER.**

(Formal parts omitted.)

Comes the plaintiff and in reply to the First Amendment to the State of Arkansas' Answer states and alleges:

1. The answer of the attorney general alleges that the plaintiff and the Little Rock School Board executed a contract for plaintiff to teach in the Little Rock School District. Plaintiff admits the execution of said contract but plaintiff denies that by executing said teaching con-

tract she elected to waive her right as a citizen of Arkansas to challenge the constitutionality and validity of the statutes of Arkansas. The Attorney General further alleges that initialed Act No. 1 of 1928 (Ark. St. 80-1627 and 80-1628) was in force in the State of Arkansas when plaintiff signed said teaching contract and became a part of said contract. The plaintiff admits that said [44] statute was in existence at the time she signed said contract but denies that said statute was a valid statute and denies that by signing said contract she waived any privileges, immunities, or guarantees of either the federal or state Constitution. Plaintiff asserts that a teacher in the public schools is entitled to all the privileges, immunities and guarantees of both the federal and state constitution.

2. The attorney general asserts in said answer that plaintiff seeks to breach said contract and put her employers in the unenviable position of law breakers. Plaintiff denies that she seeks to breach her contract and states that by asserting her constitutional privileges, immunities and guarantees she is not breaching a contract, and denies that she seeks to put her employers in the position of law breakers by asserting the invalidity of an act which if declared invalid could not possibly apply to either plaintiff or her employer.

3. Plaintiff denies that she seeks to substitute her judgment for that of her employer and denies that she seeks to explain a theory contrary to the policy of the Little Rock School District. Plaintiff asserts and alleges that the act herein asserted to be unconstitutional usurps the power of the Little Rock School District and the Little Rock School Directors to adopt policy with respect to the teaching of scientific theories.

4. The plaintiff admits the existence of Article 14 [45] Section 4 of the Constitution of the State of Arkansas which reads as follows:

"Supervision of schools.—The supervision of public schools and the execution of the laws regulating the same shall be vested in and confided to such officers as may be provided for by the General Assembly."

and asserts that Ark. St. 80-1627 and 80-1628 are unconstitutional and void as being in direct conflict with the provisions of Article 14, Section 4 of the Constitution of the State of Arkansas. The plaintiff asserts that the supervision of the public schools is constitutionally placed in the hands of school directors and administrators and that any act seeking to usurp the authority and power of the school administrators to select the proper curriculum to be taught is an invasion of the direct provisions of Article 14, Section 4 and is unconstitutional and void.

Wherefore, plaintiff prays as in her complaint.

WARREN & BULLION,
By /s/ EUGENE R. WARREN,
1450 Tower Building,
Attorneys for Plaintiff.

[29] **DEFENDANTS' FIRST AMENDMENT TO THE STATE OF ARKANSAS' ANSWER.**

(Formal parts omitted.)

Comes now Bruce Bennett, Attorney General of the State of Arkansas, and for his amended answer to the complaint states and alleges:

I.

The State of Arkansas admits that the plaintiff is a citizen and resident of Little Rock, Arkansas, is a teacher and presently teaching science at Little Rock Central High School in the Little Rock School District under a teaching contract entered into by the plaintiff and the Directors of the Little Rock School District and approved by the

superintendent, a copy of said contract being attached to this answer and made a part of this answer as if recited herein verbatim.

[30] II.

The State of Arkansas adopts the pleading contained in paragraph II of the separate answer of the Little Rock School Board.

III.

The State of Arkansas admits the allegations contained in paragraph III of the complaint.

IV.

In response to paragraph IV of the complaint, the State of Arkansas states and alleges that the plaintiff is bound by the provisions of the contract which she executed in the course of her employment as a teacher in the Little Rock School System.

In regard to her concept that it "is her professional duty and responsibility to discuss with her students and explain to them various and sundry scientific theories and hypotheses so that the student may be educated and enlightened as to all matters pertaining to science," the people of the State of Arkansas on October 6, 1928, adopted the provisions of Initiated Act No. 1 and made it unlawful for the plaintiff to teach the theory that man ascended or descended from a lower order of animals. This was adopted by a vote of 108,991 for with 63,406 against. This was the law of Arkansas when she executed her contract for employment and became a part of said contract [31] as if recited word for word therein.

So, in essence, the plaintiff seeks to breach her contract and put her employers in the unenviable position of law-breakers. She has hired out to the school district, on a

monthly wage, part of which is paid for by tax moneys derived from throughout the state; she is not under any compulsion not to teach, explain or proclaim the theory of evolution, other than while in the service of the Little Rock School Board during teaching hours.

Section 6 of Article 2 of the Constitution provides for "the free communication of thoughts and opinions . . . that all persons may freely write and publish their sentiments on all subjects, being responsible for the abuse of such right . . ."

Such foregoing provision of the Arkansas Constitution does not permit the abrogation of contractual rights and duties freely made and entered into. Let her proclaim her rights to explain or teach evolution from any forum she desires other than in her classroom.

By S 1 of Art. 2, the people have declared:

"Vox populi" . . . the people rule. To add to or subtract from the designated subjects prescribed by local school boards would create an intolerable situation whereby prescribed subject matter would of necessity be shunted aside in favor of some extraneous material that an employed teacher thinks should be substituted to the detriment of prescribed courses. The plaintiff [32] seeks to substitute her judgment for that of her employer . . . the Little Rock School Board and the avowed law as enacted by overwhelming majority of the people of Arkansas.

The State of Arkansas further states that the plaintiff entered into a contract with the Little Rock School District on the second day of July, 1965, wherein she agreed in paragraph III thereof that the contract "shall be construed in accordance with all applicable laws and regulations governing the employment, compensation and conduct of teachers," and that by her execution thereof, she solemnly contracted to abide by the Constitution of Arkan-

sas and the State statutes and specifically Initiated Act No. 1 of 1928.

Section 4 of Article 14 of the Constitution of the State of Arkansas provides:

> The supervision of public schools and the execution of the laws regulating the same shall be vested in and confided to such officers as may be provided for by the General Assembly.

Following the enactment of the foregoing Section IV by the people in 1874, the people in their infinite wisdom some 54 years later decreed that the teaching of the theory of evolution in the public schools would be contrary to the best interest of the students therein.

The plaintiff's right of freedom of speech is not impaired in any manner whatsoever. She can hire herself a hall and teach [33] evolution seven nights a week and will not be abrogating her contract; she can buy radio or television time, as an individual, and espouse evolution all she wants to; the only prohibition is that she will not do it during the hours prescribed, five days a week, when she is teaching science on the public payroll.

Freedom of speech is not a right without limitation as well illustrated by the enactment of the so called Hatch Act which prescribes that federal employees will not participate in partisan politics; so the guarantee of freedom of speech has limitations and certainly has valid limitations where contractual rights have been solemnly entered into in an employer-employee relationship such as the parties hereto have agreed upon. (See 10 Ark. L. Rev. 156, "Legal Liability for the Exercise of Free Speech" by Robert A. Leflar.)

V.

In response to paragraph V of the complaint, the State of Arkansas states that there is no Constitutional guar-

antee to the plaintiff which would permit her to ignore her contractual responsibility: that in the alternative should her prayer to teach the Darwin Theory be granted then there is no limitation on what any teacher would be permitted to substitute and teach for the prescribed curricular in the public schools of Arkansas. It should be emphasized that she wants to teach the Darwin Theory only when in fact there are dozens of other off-beat theories [34] that other teachers might want to explain to their students. Someone has to administer the schools and our statutory and constitutional laws has prescribed that they shall be administered by the duly elected school directors and such other individuals as they may designate as administrators. To grant the prayer of the plaintiff to teach Darwin, in direct controvention of statutory law and school policy would destroy the orderly administration of our public schools.

VI.

The State of Arkansas specifically denies the allegations contained in paragraph VI of the complaint in that the plaintiff has freedom of speech at all times and the constitutional right of freedom of speech is guaranteed to her as an individual in off hours but does not carry with it the absolute right to teach what she deems appropriate during those hours in which she is on the payroll of the public schools of Little Rock. Should it be otherwise, any employee of any employer, while at work could suddenly feel moved to talk or explain anything or any subject on his employer's time, without regard to fulfilling his or her specific duties as a paid employee. The plaintiff may freely write and publish their sentiments on all subjects but she does not have any constitutional right to explain or expose a theory, to a captive audience of young children, contrary to the policies of the Little Rock School District. No one denies her right to teach

or explain any subject she desires to before the take-up [35] bell in the morning or after the dismissal bell in the afternoon at the school where she is employed.

VII.

The State of Arkansas further states that the allegations contained in paragraph VII that the "sponsors of said statutes seek to justify its adoption and enforcement on the grounds that the Darwinian theory is a religious theory contrary to Christianity;" the State answers by saying that we do not know who the sponsors of Initiated Act No. 1 of 1928, some 38 years ago, were. Nor do we know who the present day "sponsors" are. The State does say that the theory of evolution is contrary to the teachings of the Bible, but whether or not the theory of evolution is a scientific theory, the product of the vivid imagination of Charles Darwin or some other scientist is merely a matter of speculation on the part of the plaintiff. Since the so called sponsors are unnamed, the State of Arkansas is herewith filing simultaneously a motion to make more certain as to who the "sponsors" are so that we may require of them as to its adoption and enforcement, the purpose thereof, and if any of the 108,991 people who voted for it in 1928 might know of its purpose in adoption. Initiated Act No. 1 was put on a ballot as a result of an initative petition in reflection of the overwhelming view of the people of the State of Arkansas. [36] No one has been clamoring since the adoption some 38 years ago to start teaching that man descended from apes, monkeys, sharks, porpoises, sea weed or other types of animals or vegetables without a soul, except the plaintiff herein. The State of Arkansas has not abridged Amendment 1 nor 14 to the Constitution of the United States in that religion is not even mentioned or implied in Initiated Act No. 1 of 1929, and the plaintiff herein certainly has the same equal protection of the State of

Arkansas that every other citizen residing herein has. She merely seeks to breach her contract.

VIII.

The State of Arkansas further states that Initiated Act No. 1 applies to the School Board of the Little Rock School District just as much as it applies to the plaintiff and they are under a legal mandate to abide by the provisions of Initiated Act No. 1, but they have not prohibited her in any way from teaching, explaining or espousing the theory of evolution without the school building where she is employed to teach.

Wherefore, Premises Considered, the State of Arkansas prays that this Court enter its order dismissing the complaint for want of equity, on the further grounds that this suit is an attempt to deviate from the terms of a legal contract by the plaintiff hereto and that if the plaintiff should want to continue to explain the theory of evolution then she should resort to the initiative and referendum provisions of the [37] constitution of Arkansas and secure petitions to put same on the ballot and let the people of Arkansas again judge what theories and subjects they want taught in their public schools.

By: /s/ BRUCE BENNETT,
BRUCE BENNETT,
Attorney General,
Attorney for Defendants.

[39] Little Rock School District

TEACHER'S CONTRACT.

1965-66.

State of Arkansas, Classification IV-1
County of Pulaski. School Central High

This contract and agreement between the Board of Directors of the Little Rock School District of Pulaski

County, Arkansas, and Miss Susan Smith, 1613 Battery, Little Rock, Arkansas, a legally qualified teacher.

Witnesseth:

The Board of Directors, by a majority vote of the Directors present at a legally held meeting on April 29, 1965, offers to employ her to teach in the Little Rock Public Schools for the period beginning August 30, 1965, and ending June 3, 1966.

The salary to be paid the employee for this period of employment is: $4,725.

Both parties hereto agree that this contract shall be construed in accordance with all applicable laws and regulations governing the employment, compensation and conduct of teachers.

The teacher shall file in the office of the Superintendent an official transcript of college training, an acceptable proof of date of birth, and shall register a valid teaching license of highest grade attainable with college credits.

All school employees shall present annually, to the superintendent's office, a certificate from a regularly licensed physician showing condition of physical and mental health, as required by the laws of Arkansas and by the rules and regulations of the State Board of Health.

All teachers who have been residents of Arkansas for one year must present a poll tax receipt before drawing their salaries.

If the schools are dismissed for any reason over which the Board of Directors has no control as determined by the Board in its sound discretion, the teacher agrees to make up without pay such part of the time as the Board of Directors deems necessary.

The teacher agrees that the Board of Directors, as the employing agency, is authorized to make such deductions from the salary specified herein as may be required by Law for Teacher Retirement and taxes to the Government of the United States.

The teacher states that she is not related to any member of the School Board within degrees prohibited by the Laws of the State of Arkansas, and further agrees to conform to all requirements, rules, and regulations of the Board of Directors.

Assignment or reassignment of any employee may be made at the discretion of the Superintendent of Schools.

Both parties hereto agree that this contract may be cancelled by mutual consent upon written notice by either party duly presented at least 30 days before the effective date of such cancellation.

This offer terminates if not accepted by returning two signed copies to the Little Rock School Administrative Office, West Markham & Izard Streets, Little Rock, Arkansas, within ten (10) days of the date shown in the next paragraph.

Signed this 2nd day of July 1965.

Board of Directors,
School District of Little Rock,
By R. H. MATSON, JR., President,
By J. A. HARREL, JR., Secretary.

SUSAN SMITH EPPERSON,
Teacher (MRS. (Illegible) O.)

[25] **SEPARATE ANSWER TO THE INTERVENTION OF HUBERT H. BLANCHARD, JR.**

(Formal parts omitted.)

Comes now the State of Arkansas, by Bruce Bennett, the Attorney General, and in response to the intervention of Hubert H. Blanchard, Jr., states and alleges:

I.

The State is without knowledge as to the allegations contained in paragraph I and specifically are unable to learn from the allegations as to where the two sons are attending school in the State of Arkansas, whether a science course is offered in said school and whether these two young men are engaged in a science course or not. However, the State of Arkansas alleges that the intervenor, Hubert H. Blanchard, Jr., has for a long period of [26] years been a teacher, principal, and superintendent in the public schools of the State of Arkansas, and there is no prohibition whatsoever under the laws of the State of Arkansas from the intervenor acquainting his two sons with the theory of evolution.

II.

The State of Arkansas further states that in regard to all of the allegations contained in paragraph III, it has long been recognized by the school authorities of the State, by the Arkansas General Assembly, the parents and the public that there must be some uniform school curriculum provided in elementary school classes and that the assertion by the intervenor that "scholars should be informed of what may not be believable as well as what may be believable and academic freedom to learn demands that the scholar, and not a political majority, shall have the right to select what, to him, is believable and what is not believable" is antithetically and diametrically

opposed to the organization and conduct of an orderly school curriculum. Under the foregoing theory the intervenor espouses the public schools of Arkansas should be taught the "Hams and Eggs Theory of California", the "Way to Have More is to Produce Less" theory, the "God is Dead" theory, and that Charles Darwin was grossly wrong in his theory and that men evolved from brown sea weed as espoused by one Lawrence S. Dillon, Assistant Professor of Biology of Texas A. and M. College.

Should the allegations contained in paragraph III of the [27] intervention be construed as inalienable rights, then the public schools of the State of Arkansas must of necessity open its doors to the haranguing of every soap box orator with a crack pot theory on the premise that "it is scientific knowledge" which the students would have explained. The plaintiff in this case wants to explain one theory; if she should be permitted to do this, what is to prohibit John Doe of Riverside, California, coming to the science department of Little Rock Public Schools and saying that he wanted to teach his theory that man was evolved from the eruption of a gigantic earthquake which occurred in the year 1,000,000,000,006 B. C.

Wherefore, Premises Considered, the State of Arkansas prays that the intervention be dismissed for want of equity.

/s/ BRUCE BENNETT,
BRUCE BENNETT,
Attorney General,
Attorney for Defendants.

[41] **MOTION.**

(Formal parts omitted.)

Comes the plaintiff and files herewith her pretrial Motion for the purpose of defining the issues to be presented in this cause. The plaintiff moves:

1. That this Honorable Court exclude the testimony of scientific and religious witnesses and that statements of such witnesses, if any, be confined to written statements filed with the Court in triplicate either before or within a reasonable time after April 1, 1966.

2. That the issues to be tried in this case be limited to:

a. Evidence of plaintiff's occupation as a school teacher and her qualifications therefor.

b. Proof of the teaching contract executed between [42] plaintiff and the Little Rock School District.

c. Evidence as to what plaintiff seeks to teach to her classes.

d. Proof of the enactment of and existence of Arkansas Statutes 80-1627 and 80-1628.

e. Evidence of intervenors occupation and parental relationship.

f. Evidence as to what intervenor seeks to have taught to his children.

g. The admissions in the defendants' answers.

h. Any excerpt from the Bible or any scientific book or manuscript which has been reduced to writing and filed in triplicate.

i. Any rule or regulation of the Little Rock School District.

WARREN & BULLION,
By /s/ EUGENE R. WARREN,
1450 Tower Building,
Attorneys for Plaintiff.

[46] **RESPONSE TO MOTION TO MAKE MORE DEFINITE AND CERTAIN.**

(Formal parts omitted.)

Comes the plaintiff, Susan Epperson, and in answer to the Motion of the Attorney General of The State of Arkansas to Make More Definite and Certain, states and alleges:

The plaintiff used the word "sponsor" in her complaint to describe those who allege and assert the validity of the statute in question and not to describe the originator of the statute.

Wherefore, having fully answered, plaintiff prays as in the original complaint.

SUSAN EPPERSON,
By: WARREN & PULLION,
1450 Tower Building,
Little Rock, Arkansas,
[47] By: /s/ EUGENE R. WARREN,
Attorneys for Plaintiff.

[48] **MOTION TO MAKE MORE DEFINITE AND CERTAIN.**

(Formal parts omitted.)

Comes now the State of Arkansas and moves the Court that plaintiff be required to make her complaint more definite and certain in the following respects, to-wit:

Paragraph IV of the Complaint states in part:

> As a teacher of science in the public schools of Arkansas, plaintiff conceives it to be her professional duty and responsibility to discuss with her students and to explain to them various and sundry scientific

theories and hypotheses so that the student may be educated and enlightened as to all matters pertaining to science. (Emphasis ours.)

Plaintiff asks that these various theories be named and their authors enumerated; the date, if known, be stated, when such theories were first propounded; and the gist of such theories be expressed.

[49] Respectfully submitted,

/s/ BRUCE BENNETT,
BRUCE BENNETT,
Attorney General.

[50] **RESPONSE TO MOTION OF THE STATE OF ARKANSAS.**

(Formal parts omitted.)

Comes the plaintiff, Susan Epperson, and in response to the Motion of the Attorney General of The State of Arkansas, states and alleges:

The plaintiff desires to teach and believes she has a constitutional right to teach the following statement of the history of man:

> Man and mammals. The organs and systems of the human body closely resemble those of other mammals. The structural similarity of man and the other primates is especially striking. Almost every anatomical detail is similar. You can observe this similarity in the skeleton and muscles, tooth structure, position and [51] structure of the eyes, form of the hands and feet, and even in the facial expressions. Similarities in the internal structures of man and the other primates are equally striking. They may be seen in the structure of the heart and blood vessels, lungs, digestive organs, excretory organs, glands, and nearly all other internal organs.

Even the chemical secretions of man and other mammals are similar, and the digestive enzymes are the same. The insulin used to save the lives of diabetics is extracted from beef or hog pancreas. The RH factor, so important in matching human blood types, was discovered originally in the blood of the Rhesus monkey.

Although man is structurally and biochemically similar to the other mammals, he has significant differences that have allowed him to become biologically superior. He is the only mammal with truly upright posture. This is possible because he has a shortened and flattened pelvis which holds the abdominal organs. The upright posture freed man's hands so that they could be used entirely for manipulation. At the same time the action of man's thumb opposes that of the fingers, so that his hand is ideally suited for grasping. Because of their many sensory receptors, the hands are highly sensitive [52] to touch and are grooved so that they can grip smooth objects.

Both of man's eyes see the same vision from slightly different angles, resulting in an improved sense of depth. The combination of intelligence, acute vision, and efficient hands is ideal for the use of tools, an ability peculiar to man. The characteristic that has probably made the most difference in man's development, however, is his capacity to use symbols in the form of the written and spoken word. This ability to communicate with others of the same species by symbols and to pass learning on from generation to generation has allowed man to undergo a rapid cultural evolution not possible in other species.

Theories about man's development. In 1871 the English biologist Charles Darwin published his famous book entitled The Descent of Man. Darwin proposed

that the same forces operating to bring about changes in plants and animals could also affect man and his development. Biologists classify man as a primate because of his many structural similarities to the monkey, gorilla, chimpanzee, orangutan, and gibbon. In his book, Darwin pointed out these similarities, and some people interpreted his comparisons as suggesting that [53] man evolved from monkeys. Actually this unfortunate misinterpretation was far from Darwin's intent. As you know, it is the less specialized primitive forms that are most able to move into new environments and evolve into new species. The orangutans and chimpanzees of today are highly specialized forms that have probably evolved from more primitive ancestors. Likewise, modern man has probably evolved from primitive, more generalized ancestors. If we were able to trace the years, we might find a generalized primate that was common ancestor to both modern man and the modern primates. It is most likely, however, that the two lines of descent separated at a very early date and gradually evolved into the forms of today.

At the time Darwin lived, no remains of early man had been found. Since then hundreds of bones have been unearthed. They have been dated and studied by anthropologists, who specialize in the history of man. This evidence still does not provide us with a complete picture of man's development, but the fossils serve as clues from which hypotheses can be formed. A fossil skull indicates the size of the brain, shape of the head, and age of the man at the time of death. The jaw structure indicates whether its owner had the capacity for speech. It would not mean, however, that a language was used.

A study of the environment of primitive man also helps to piece together man's development. What

did early men eat? [54] Wherever the anthropologist finds evidences of primitive man, he searches for fossil remains of animals that might have been used for food. Charred indicate that he had learned to use fire to cook meat. The type of food also indicates the climate and nature of the surroundings. The anthropologist is also interested in evidence of tools, since their use is unique to man. If similar tools are found over a wide area, some type of communication must have occurred. The material used and the complexity of the tools are indications of how highly developed the men were.

Putting together the pieces. In 1924 a perceptive worker in a South African quarry noticed a small fossilized skull that had been dislodged by blasting. When the fossil was given to a South African medical school, Professor Raymond Dart, an anatomist, recognized its resemblance to human skulls. Dr. Dart named the primate Australopithecus africanus, which means "southern ape from Africa". Since then other bones of this primate have been found.

Dr. and Mrs. L. S. B. Leakey have spent nearly 35 years excavating and studying fossils. Much of their effort has centered in an area of the Olduvai Gorge in Tanganyika. They first found many pebble tools thought to have been used for cutting instruments. In 1959 the Leakeys unearthed some teeth, which led to the excavation of an area believed to be a campsite of ancient [55] man. Since then, skull fragments have been pieced together. Bones from a foot, fingers, and a lower jaw with well preserved teeth have provided us with clues about the structure of the primate that was named Zinjanthropus. By using the potassium-argon method, scientists at the University of California have placed its age at 1,750,000 years.

The bones of Zinijanthropus and Australopithecus are similar and look like those of modern apes. The pointed fanglike teeth of modern apes are not found in these forms, however. Also, the shape of the pelvis and opening for the spinal cord in the skull indicate an upright posture. Anthropologists are not agreed as to whether these forms should be placed in the ape family or in the family that includes man. In mid-1964 Dr. Leakey published an account of the discovery of the remains of still another primitive manlike form in the Olduvai Gorge. He has named this form Homo havilis, and dating evidence indicates that it lived at the same time as Zinijanthropus. Homo habilis, however, is more manlike. He seems to have walked and run erect, to have had a well opposed thumb, and to have eaten both meat and plant foods, like modern man. Dr. Leakey now believes that Homo habilis was the ancestor of modern man, while Zinjanthropus and Australophithecus were evolutionary dead ends. Dr. Leakey's theory indicates that the genus Homo [56] was present on earth about 1,200,000 years earlier than anthropologists had previously thought.

Early forms of man. In 1891 a part of a skull, a piece of a jaw, and an upper leg bone were discovered in an excavation on the island of Java. These remains lay in a deposit of sand and gravel transported by an early glacier, so that the period could be roughly dated. Similar remains were found in the same general region in 1937. Java man, as he was first called, is believed to have walked erect, so that he is now called Pithecanthropus erectus. He is thought to have lived 500,000 years ago. He had a slanting forehead and heavy brow ridges. The skull of Java man indicates that his brain, while only about half the size of modern man's, was more than

one third larger than that of the present-day gorilla. Anthropologists believe that Java man learned to make use of crude stone weapons and of fire. Pithecanthropus remains have also been discovered in excavations of ancient caves near Peking. Many of the skulls of Peking man that were found are broken near the base, suggesting that he was a head hunter.

Neanderthal man. More is known about Neanderthal man, who lived in Europe, Asia Minor, Siberia, and Northern Africa. Scientists believe that Neanderthal man disappeared about 25,000 years ago, near the close of the glacial age. Information [57] about him has been acquired from careful study of almost 100 skeletons, many of them nearly complete. He was about five feet tall and walked in a stooped position. His bone structure indicates that he was powerfully built. His facial features were coarse. Like Pithecanthropus, his forehead sloped backward from heavy brow ridges. His mouth was large, and he had little chin.

Neanderthal man lived in caves from which he journeyed on hunting expeditions in search of the hairy mammoth, saber-toothed tiger, and wooly rhinoceros. His brain was as large or larger than that of modern man. Neanderthal man used stone tools and weapons, made use of fire, buried his dead, and lived in a family group.

Cro-Magnon man. Anthropologists place Cro-Magnon man in the same species as modern man, Homo sapiens. He lived in Europe, especially in France and Spain, about 50,000 years ago. He had a high forehead and a well-developed chin, and lacked the heavy brow ridges of most of the more primitive men. Several caves along the southern coast of France have yielded Cro-Magnon weapons of stone and bone

as well as skeletons. The walls of these caves bear beautiful drawings of animals of the region. These drawings have been valuable in dating the period. Anthropologists believe that Cro-Magnon man, living at the same time as Neanderthal man and being superior to him in intelligence, [58] may have exterminated him. There is also evidence that Neanderthal man mixed with Cro-Magnon man and in time lost his identity.

In conclusion: Intelligence combined with highly efficient hands and the ability to communicate separate man from the other mammals. It is believed by man anthropologists that, although man evolved along separate lines from the primates, the two forms may have had a common, generalized ancestor in the remote past.

An anthropologist is truly a detective. Although fossils are few and scattered, they provide valuable information regarding life in the past. By dating the fossils and comparing the structures of bones, the anthropologist is able to form hypotheses regarding primitive man, the food he ate, the tools he used, and the environment in which he lived. The comparison of manlike types does not mean, however, that one developed from another. There is no conclusive evidence to link the forms that have been found, dated, described, and compared. Modern man may have developed from forms that have not yet been located.

WARREN & BULLION,
By: /s/ EUGENE R. WARREN,
Attorneys for Plaintiff.

[76] **PROCEEDINGS.**

(Caption omitted.)

April 2, 1966.

SUSAN EPPERSON,

plaintiff herein, and a witness in her own behalf, having first been duly sworn, testified as follows:

Direct Examination,

By Mr. Warren:

Q. Will you please state your name?

A. Susan Epperson.

Q. Where do you live, Mrs. Epperson?

A. 1613 Battery Street, here in Little Rock.

Q. What is your age?

A. 24.

Q. 24?

A. Yes, sir.

Q. Are you married?

A. Yes.

Q. What does your husband do?

A. He is a First Lieutenant in the United States Air Force.

Q. What is your occupation?

A. I am a school teacher.

Q. Will you give us a brief history of your education?

[77] A. I attended grade school and high school in Clarksville, Arkansas. I went to College at the College of the Ozarks in Clarksville, Arkansas and received my Bachelor in Science Degree there in 1962. From there I went to the University of Illinois in Urbana, Illinois and completed my Master's Degree in Zoology in 1964.

Q. How long have you taught in the Little Rock Public School System?

A. Since the Fall of 1964.

Q. Do you have a contract with the Little Rock School System?

A. Yes, I do.

Mr. Warren: Your Honor, this contract was attached to the pleadings.

A. I have the contract here.

Q. Will you identify that document of one sheet which I have just handed you?

A. This is it.

Mr. Warren: May we mark this as Exhibit No. 1.

The Court: Let it be introduced.

[78] (Thereupon, said contract was marked for identification as Exhibit No. 1 and received in evidence.)

Mr. Warren: May we stipulate that the contract that is in the pleadings may be accepted in lieu of this original contract?

Mr. Bennett: Yes.

The Court: All right.

Mr. Warren: Q. Mrs. Epperson, you are the plaintiff in the pending law suit?

A. Yes, I am.

Q. Would you state to the Court why you brought this law suit?

A. I brought this law suit because I have a Text Book which includes the theory about the origin or the descent or ascent of man from a lower form of animal. This seemed to be a widely accepted theory and I feel it is my responsibility to acquaint my students with it. It is basic to the study of the biology which I teach and/or biology in general and I feel that I should acquaint my students with it. However, I have been informed by my attorney and others that if I do teach it, [79] I am subject to criminal prosecution and dismissal from my job and being fired.

Q. Mrs. Epperson, a motion was filed by the Attorney General to require you to state what you wanted to teach your pupils with reference to evolution of man. Now, will

you tell the Court what it is that you want to teach your students?

A. I wish to teach them what is given in the Text Book that was provided by the School Administration.

Q. The Text Book that was provided for you for the purpose of your teaching biology by the School Administration?

A. Yes, sir.

Q. It has a chapter in it on the biology of man?

A. Yes, sir.

Q. And that is what you wish to teach your students?

A. Yes, sir.

The Court: Now, that gets to the question I raised in the preliminary statement. Does this book that is given to her by the School Board conform to the contract? Is it referred to in any way in the contract?

Mr. Warren: No, sir, the contract simply provides that— I don't know what the General had reference to in it.

[80] The Court: The contention on the other side, as I understood it, is she is violating the contract.

Mr. Warren: And the contention on our side is she is trying to comply with her contract and seeking the protection of this Court in complying with her contract.

The Court: Then your contention is by virtue of furnishing a Text Book which contains this theory, then that is a part of the contract?

Mr. Warren: That's right and she, under her contract, is under a duty to teach the material that is furnished her, but if she teaches it she is guilty of a criminal act.

The Court: I want to get in the record the facts here.

Mr. Warren: Q. Will you please identify the Text Book to which you have just referred?

A. This is the Text Book here.

Q. You teach biology in what grade, Mrs. Epperson?

A. In the 10th grade.

Q. In the 10th grade?

[81] A. Yes, sir.

Q. And this is the Text Book and shall we identify it by name?

A. The name is Modern Biology.

Q. And who is the Author?

A. James H. Otto and Albert Towle.

Q. That Text Book is the adopted Text Book for the teaching of biology in the 10th grade?

A. Yes, sir.

Q. Now what particular chapter in that book do you have reference to?

A. A chapter called "The History of Man," Chapter 39.

Mr. Warren: Your Honor, I have reproduced Chapter 39. I think everybody has the book. It has never been more popular than today. I would like to introduce this reproduction so that I will not encumber the record with introducing the entire volume.

The Court: Let it be introduced.

(Thereupon, said reproduction of Chapter 39, "The History of Man," was marked for identification as Exhibit No. 2 and received in evidence.)

[82] Mr. Warren: I shall not ask the witness to read this chapter at this time, simply because this is a matter of argument to be presented to the Court.

The Court: I understand.

Mr. Warren: What the book contains and what it means, etc. is a matter for presentation to the Court.

The Court: What I am trying to get clear here. Off the record.

(Off the record discussion.)

Mr. Warren: Q. Mrs. Epperson, have you taught this chapter yet? A. No, I have not.

Q. Do you intend to teach this chapter? A. I am under contract to teach what is in the text and it is in the text so, therefore, I intend to teach it.

Q. You intend to teach it?

A. Yes, sir.

Mr. Warren: That is all.

[83] Cross-Examination,

By Mr. Bennett:

Q. Mrs. Epperson, did you have anything to do with the selection of this particular Text Book you teach in biology?

A. A group of all the biology teachers in the system voted on various texts.

Q. When did you all do that?

A. Last spring.

Q. Have you had this book for one year or two years?

A. Just this year.

Q. And the book they had before, did they have a section on the Darwinian Theory?

A. It did not.

Q. It did not?

A. No, sir.

Q. So you were one of the individuals who voted to put this book in the public schools, is that right?

A. We voted for it.

Q. Ma'am?

A. We did vote for it, yes.

Q. So it was voluntary on your part, as far as Chapter 39 is concerned, that it is in the book that you now are trying to [84] teach, is that right?

A. Yes.

Q. Mrs. Epperson, how do you define academic freedom?

A. That would simply be a matter of personal opinion and I don't feel that my personal opinions are material.

Q. You allege it violates this restraint—I mean violates your academic freedom and do you have a definition of academic freedom that is in line with your allegation in your complaint?

A. In this case, yes, I feel that academic freedom in-

volves the subject which one is teaching; acquainting one's students with all of the important matters associated with a certain subject field and my subject field happens to be biology and one of the important concepts in biology is the theory of evolution and, therefore, I feel that I should introduce this.

Q. The Little School Board hasn't instructed you to teach this, has it?

A. No, they have not.

Q. Ma'am?

A. They haven't instructed me as such. The material is simply in the text.

Q. Chapter 39 is pretty well over in this book, isn't it?

A. Yes, it is.

[85] Q. You brought this law suit in November of last year?

A. December, I believe.

Q. Had you reached Chapter 39 when you brought the law suit?

A. No, I hadn't.

Q. But you made up your mind that you were going to teach this theory in contravention of the state law?

A. I knew the theory was there and that I would eventually come to it and I wanted to find out whether the law really was constitutional or not and what I should do when I got to it.

Q. You signed a contract with the Little Rock School Board on the 2nd day of July, 1965?

A. Yes, sir.

Q. And there is contained in this contract this paragraph: "Both parties hereto agree that this contract should be construed in accordance with all applicable laws and regulations governing the employment and compensation and conduct of teachers."

A. Yes.

Q. Do you know the significance of that particular paragraph in this contract?

A. I believe I do.

Q. Did you at that time agree to abide by the state laws? [86] A. Yes, sir.

Q. Now you want to change that contract, is that right?

Mr. Warren: I object to this line of questioning. This lady is a citizen of Arkansas and has a right at any time to attack the validity of any statute and she has a right to the Court here in the determination of the constitutionality.

The Court: She wants to teach it, she says. This book which has been authorized or adopted by the School Board and in so doing she thinks she will violate the statute, if it is a valid statute. Therefore, she is questioning the validity of the statute.

Mr. Warren: In this Court of law.

The Court: Yes.

Mr. Bennett: Q. Mrs. Epperson, have you ever heard of a creature or skull that was found in Kenya, East Africa, in 1948, which in scientific circles was——

Mr. Warren: Just a minute. I object.

Mr. Bennett: [87] I haven't finished.

The Court: I don't know what the purpose of this is.

Mr. Warren: I object. I don't, either. That is the reason I am objecting.

The Court: State the purpose.

Mr. Warren: I think whether the Darwinian Theory is true or false has absolutely nothing to do with this law suit.

The Court: I don't understand that to be the question.

Mr. Bennett: The sole question of the law suit is whether or not the statute is reasonable. Now, she wants to teach only one theory and I can say this, Judge, there is over 40 different theories. Why should she be able to select the Darwinian Theory to the exclusion of all of the others?

The Court: I don't understand that she is. She may want to teach them all.

Mr. Bennett: She says she wants to teach only Chapter 39, the [88] Darwinian Theory.

The Court: She hasn't said she has refused to teach other theories.

Mr. Warren: I don't think he ought to be able to ask her about some particular skull or fossil.

Mr. Bennett: She is a master in geology and she ought to be able to say yes or no.

The Court: Say yes or no.

Mr. Bennett: Am I to understand the State can't ask this witness this question?

A. Yes, I have heard it.

The Court: Go ahead and answer.

Mr. Bennett: Q. Do you know what deduction Dr. William L. Strauss, President of the American Association of Physical Anthropologists in 1952, deduced from the discovery of the skull proconsul?

[89] Mr. Warren: I object to that question.

The Court: Objection sustained.

Mr. Bennett: Q. Do you know of any theory of evolution which teaches that a man evolved from a monkey and not the ape?

A. No, I do not know of any such theory.

Q. And you do not know whether or not that was Dr. Strauss' theory?

Mr. Warren: I object, Your Honor.

The Court: She said she didn't know.

Mr. Bennett: Q. You have never heard of any such theory that man evolved from the ape and not the monkey?

A. No.

Q. Just in short, what is your concept of Mr. Darwin's theory?

Mr. Warren: I object, Your Honor. What her concept of Mr. Darwin's theory is has absolutely nothing to do with this [90] law suit, or Mr. Bennett's concept or my

concept. She asked to be permitted to teach a chapter in the book assigned to her, which chapter collides and conflicts with this present statute.

Mr. Bennett: Q. You want to teach Chapter 39?

A. Yes, sir.

Q. That is on the Darwin theory?

A. Yes, sir.

Q. What is the Darwin theory?

A. The Darwin theory is one of the many theories about how organisms change over a long period of time.

Q. Not about the many theories. What is the Darwin theory?

A. It is a theory about how organisms change over long periods of time. It is one man's idea of what could cause these changes to take place.

Q. It is merely a theory?

A. Yes, it is.

The Court: I don't want to interfere with your question and imply I am trying to interpose my efforts to try the law suit, but I would like to ask this question, of whether or not you propose or plan to teach this theory in Chapter 39, I [91] believe it is of this book, do you propose to teaching that as a proved and established fact?

A. It is not a proved and established fact.

Q. Do you propose to teach it as a proved and established fact, which a child or student must accept, or do you propose to merely present it and explain it as an unaccepted theory?

A. I propose to explain it as simply a theory.

Q. You do not propose to teach it as an established fact which a child must accept?

A. No, I do not.

Mr. Bennett: Q. In your response, Mrs. Epperson, you use the word three times that you want to teach the Darwin Theory. And in your attorney's transmittal of Chapter 39, he used the word "teach" three times. Have you seen this letter from Mr. Warren to me?

A. No, I have not until now.

Q. Do you concur with Mr. Warren that you want to teach the theory?

Mr. Warren: Your Honor, I want to interpose an objection. In the first place, this is a letter of transmittal to the [92] Attorney General from me. I quite agree that I did use the word "teach". I think that I was unfamiliar with all of the definitions of teach, as is the Attorney General, but whatever the word "teach" means is a matter of law, not a matter of cross-examination of this witness.

The Court: I think that is correct. I think it is proper to examine the witness about what, in fact, she proposes to do.

Mr. Warren: And you asked her and she answered that question.

The Court: The defimition of the word would be a matter of conclusion.

Mr. Warren: All right.

Mr. Bennett: Q. In response to motion of the State of Arkansas to say what you want to teach, this language is used: "The Plaintiff desires to teach and believes she has a constitutional right to teach the following statements of the history of man." Now, in your original complaint you said you wanted to explain the Darwin Theory and there you say you want to teach it. [93] Will you tell the Court the difference between explaining something and teaching something?

A. That is a matter of one's personal interpretation, really. There are many definitions of the word "teach" and many definitions of the word "explain".

Q. You teach arithmetic. That is a definite set science?

A. I'm sorry.

Q. You teach arithmetic?

A. Yes.

Q. But do you explain biology or do you teach biology?

A. You can do both. You can explain arithmetic or you can teach arithmetic.

Q. Will you tell the Court what you want to teach or explain to these students?

Mr. Warren: We are haggling with the witness. We have introduced exactly all she wants to teach them.

Mr. Bennett: I did not object to any question Mr. Warren asked.

Mr. Warren: I didn't ask any improper questions. (Laughter)

The Court: Ladies and gentlemen, I hope we won't have to have the Sheriff clear this court room and I do not want [94] any more of this outbursts of laughter or applause or anything. This is not a matter of public demonstration, although some people seem to indicate it might be, but it is far from that. This is a serious matter. It is merely testing the constitutionality of the validity of an Act under the Constitution of the United States and the Constitution of the State of Arkansas and that is what is before this Court and all that is before the Court and I think we ought to be dignified about it and have no laughing or demonstrations about what any attorney or anyone else said or does in this case. I hope that will be sufficient. Go ahead.

Mr. Warren: I interposed an objection that the word "teach" has many connotations.

The Court: I understand that and I don't think we need to go any further to explain what they mean by the word "teach", "theory" or otherwise. She has placed in the record here as Exhibit No. 2 what she proposes to teach and that speaks for itself.

Mr. Bennett: I asked her the question. I asked her what she wanted to teach and what is the Darwin theory and she hasn't [95] answered yet.

The Court: Go ahead.

Mr. Warren: She went into great length answering that. I submit just a moment ago she answered it.

The Court: She has been replying to your questions quite consistently. Go ahead, if you have another question to ask her.

Mr. Bennett: Q. Do you know of any theory of evolution that man evolved from an algae?

A. Not exactly, no.

Q. Do you know of any theory that man evolved from seaweeds?

A. No, sir.

Q. You have never been acquainted with that theory?

A. Not as a strict theory as such, no, sir.

Q. Have you been in your studies acquainted with the new knowledge brought forth about the cell structure of man as contrasted to the cell structure of other animals and vegetables?

Mr. Warren: I object to that. I hate to jump up here, but he [96] is simply testing this lady's wide range of knowledge. That is not the question involved here by the Court. There may be a thousand theories this lady never heard of.

Mr. Bennett: Why should she want to teach only one theory?

Mr. Warren: Because it is in the book.

The Court: I think your objection is well taken.

Mr. Bennett: Q. Are there many dozen different theories of evolution?

A. I am sure there must be, yes, sir.

Q. But you want to teach only one?

A. I want to teach the theories to my students which seem to be widely accepted and which seem to be supported by most scientists.

Q. What would you do if a parent wanted you to teach another theory?

A. That is what a parent wants me to teach and that is not my employer.

Q. So, you are going to trust your judgment only as to what the students should be taught?

The Court: [97] No. She used the word "employer".

Mr. Bennett: That's right, but her employer hasn't authorized her to teach Chapter 39.

The Court: I understand he had.

Mr. Bennett: Q. Has the Little Rock School Board told you to teach Chapter 39?

A. No, sir, not in words.

Q. Who instructed you otherwise to teach it?

The Court: Wait. Let's get this clear. Do I understand you to say the Board has authorized you to teach the book which contains Chapter 39?

A. Yes, sir, they have.

Mr. Bennett: Q. I thought you told me the teachers selected this book, not the Little Rock School Board?

A. The teachers voted on the book.

Q. Did anybody on the Little Rock School Board, or your Superintendent, or your Principal, instruct you to teach or not teach Chapter 39?

[98] A. They have not given me a written statement saying to do this, no. They have simply provided me with a book which includes this Chapter.

Q. That you have helped select?

A. Yes, sir.

Q. Do you know whether or not your Superintendent or Principal saw this book before it was distributed to the students?

A. No, I do not. I am sure they did, though.

Q. They did.

A. I do not know.

Q. Who is the Principal you think saw it?

A. The Principal is—of my school now?

Q. Yes.

A. The Principal is Mr. Harry Carter now.

Q. Harry who?

A. Carter.

Q. Do you think he has seen Chapter 39?

A. I imagine he has.

Q. Before it was adopted by the teachers?

Mr. Warren: I really don't think that is material.

The Court: [99] No, it is not material at all. It doesn't control what the Board does and what they base their method of adopting books on.

Mr. Bennett: Q. You have no authority from the Little Rock School Board to teach Chapter 39?

A. Except for the fact that it is in the book.

Q. It is in the book and if some parents wanted you to teach another theory of evolution besides the Darwinian Theory you would not teach it, is that correct?

A. I would not teach it without going through channels involving my employer and finding out if this was the sort of thing they would have me teach.

Q. Mrs. Epperson, this whole case turns on a statute passed in 1928. I was a child and I am sure you probably wasn't here at that time?

A. Yes.

Q. And, of course, it is whether or not the statute is a reasonable exercise of the power of the people?

A. Yes.

Q. To legislate. Now, there is a lot of people that think that the theory of evolution is diametrically opposed to other religious teachings as to the creation of man. Do you thinking—do you think the teaching of evolution teaches an [100] atheistic doctrine?

Mr. Warren: I object, Your Honor.

The Court: Mr. Bennett, as I gather from the statement of counsel in the opening of this case, I think you in substance agree that the question before this Court is not whether the theory of evolution is true or false, or what anyone thinks about it. That has nothing to do with this case. It is not a question of whether the creation of man as contained in the Bible, or Book of Genesis, is true or untrue. That question is not before this Court. It is a question of the validity of this Act as to whether or not it is reasonable and constitutional. So, these questions to

this witness, or any other witness, as to what they think or believe about the Bible or evolution, I think is immaterial to the question before this Court.

Mr. Bennett: I didn't ask her about the Bible.

The Court: You did ask her about evolution. What she believes or disbelieves about the theory of evolution, I don't think [101] is material to the issue in this case.

Mr. Bennett: I want to see if she thinks it is a reasonable statute.

The Court: You might discuss it indefinitely, but I think we ought to confine our questions in the testimony to questions material to the issue in this case.

Mr. Bennett: Q. You don't have any children, do you, Mrs. Epperson?

A. No, sir.

Q. Do you think that your employer should be able to exercise some restraint over your activities?

A. Yes, I think so.

Q. And is it your feeling that the School Board has restrained you from teaching Chapter 39?

Mr. Warren: I object, Your Honor. She didn't so testify.

The Court: It is quite the opposite. She testified the School Board had authorized her to teach it because it is contained in this text book.

Mr. Bennett: [102] I didn't hear her say the School Board authorized her to teach it.

Mr. Bennett: Q. Do you have any letters or memorandum authorizing you to teach this?

A. No, sir.

The Court: Not the specific chapter, but the book. She is authorized to teach the book.

Mr. Bennett: The whole thing disputed is Chapter 39.

The Court: It is in the book that she says the Board has authorized her to teach. Am I correct?

A. Yes, sir.

Mr. Bennett: Q. You are well aware of the state law that says you shall not teach it?

A. Yes, sir.

Mr. Warren: We have been over this time and time again.

The Court: She has answered the question.

The Court: [103] Go ahead, if you want to cross-examine her.

Mr. Bennett: Q. I asked her if she had any authorization from your Principal or your Superintendent, in writing or orally, saying you could teach Chapter 39?

Mr. Warren: To my certain knowledge, that is the third time.

Mr. Bennett: Let her answer the question.

Mr. Warren: She has answered it twice.

The Court: She answered it by saying if you want to question the fact of whether or not Chapter 39 is contained in the book.

Mr. Bennett: Are you just going to stand up and object all the time?

Mr. Warren: Whenever you ask an improper question I am going to object.

Mr. Bennett: Q. Answer the question yes or no.

A. No, I do not.

[104] Mr. Bennett: Q. This theory is highly controversial?

A. Yes, sir, it is.

Q. It has been for years and years, since Mr. Darwin wrote it?

A. Yes, sir.

Q. You know the majority of the people of the State of Arkansas——

The Court: Mr. Bennett, I don't want to unduly restrict you and want to let it be understood at the outset this Court is not unmindful of the public interest in this case, or the concern of many people, but I see no reason to just carry on, and question her, or argue in a way with the witness as to what she believes.

Mr. Bennett: I have not argued with the witness.

The Court: You are indicating that you are discussing with her what she believes or disbelieves, or doesn't think. Confine it to the issue in this case.

Mr. Bennett: The people in this state are interested in this [105] law suit.

The Court: I just said so.

Mr. Bennett: I am entitled to ask this witness certain questions.

The Court: There are certain questions you are not entitled to ask her, also.

Mr. Bennett: Between Mr. Warren's objections and—strike that.

Q. Mrs. Epperson, in this book you have a chapter on genetics?

A. Yes, sir.

Q. Do you teach that?

A. Yes, sir.

Q. In that chapter on genetics, do you teach anything about chromosomes?

A. Yes, sir.

Q. Do you all look at cells of animals and vegetables over there under the microscope?

A. Yes, sir, we do.

[106] Q. Is there anything you found out in your courses in biology and zoology which shows that the human cell is in any way similar to an animal cell?

A. Yes, sir.

Q. But they are always human cells, aren't they?

A. Yes, sir.

Q. Have you been taught in your courses that like species produce like species?

A. On the whole and largely, yes.

Q. On the whole and largely. Give me some examples of specific exceptions?

Mr. Warren: Your Honor, I hesitate to continue object-

ing, but we are wandering far afield here. This young lady is not on trial for her proficiency.

Mr. Bennett: I am not questioning that.

Mr. Warren: You are.

Mr. Bennett: We are asking about something she teaches in the school, chromosomes.

Mr. Warren: [107] That has nothing to do with the issues in this case.

The Court: I think on cross-examination it might go to the point of whether she is teaching something different than what is in the book. He might question her along that line.

Mr. Bennett: Q. Give me some examples, if you can, Mrs. Epperson, where the cell structure of a human being is similar or exactly like the cell structure of a lower animal or a vegetable.

A. The cells of certain organisms are similar.

Q. What organisms?

A. Organisms in various species.

Q. What species?

A. Humans.

Mr. Warren: I want to interpose this objection at this time. Mr. Bennett is trying to get from this witness some statement that he thinks will open the door and load this record with a lot of so-called scientific theory and testimony. That is the reason I am continuing to object. It is completely [108] immaterial, completely irrelevant, and he is trying to use it later on to say she by her testimony invited his irrelevant testimony later on.

The Court: Well, the chapter or the theory that she proposes to teach or explain or present is in the record. Now, if he wants to ask her something that goes to the question of whether or not she is confining her teaching to that or something contrary to it, I think for that purpose it might be admitted, but not for other purposes.

Mr. Bennett: Q. Mrs. Epperson, the theory of evolution

is simply that the survival of the fittest is the law, is that right? A. That is an idea which Darwin had.

Q. Didn't Professor Nietzsche, in Germany, also propose that, which led to a theory of the superman race?

A. I am not sure.

Q. You have not heard of Professor Nietzsche?

A. How do you spell it?

Q. N-i-e-t-z-s-c-h-e.

A. I believe I have heard the name, but I am not familiar with the theories he may have come up with.

Q. The Darwin Theory is that the survival of the fittest [109] is the law of nature?

A. This is Darwin's concept, yes, sir.

Q. And you subscribe to that?

Mr. Warren: Just a minute. I object again. Her personal beliefs have nothing to do with it.

The Court: Objection sustained.

Mr. Bennett: Q. Are you teaching the survival of the fittest to the children over there in the 10th Grade?

A. I have not gotten to that chapter.

Q. You have read the chapter?

A. Yes, sir.

Q. Are you going to teach them that?

Mr. Warren: The chapter speaks for itself. We put that in the record. She says all she intends to teach the children is what is in the chapter.

Mr. Bennett: Q. That is the chapter that says the survival of the fittest is the Theory of Darwin?

A. Yes, sir.

[110] Q. And you are going to teach that?

A. Yes, sir.

Q. Can you tell me what the transmutation of the species means?

A. That again is a matter of my own personal ideas and the study I have made on the subject and I don't feel my personal view on this would be material.

Q. A simple definition of the theory of organic evolution is the transmutation of the species, is that correct?

A. Approximately so.

Q. And the Theory of Darwin is that there was a single common ancestor, is that right?

Mr. Warren: I again want to object. What she is going to teach is in the book, Chapter 39.

The Court: I understand that. He is cross-examining her.

Mr. Bennett: I am finding out what she wants to teach.

Mr. Warren: He is not asking her what is in Chapter 39. He is asking her about Nietzsche and what Darwin taught, etc. If he will confine his cross-examination to what is in Chapter [111] 39, I have no objection.

The Court: All right. Go ahead.

Mr. Bennett: Q. Now, a protozoa is an infinite cell, is that right?

A. One cell animal. I would say it is finite.

Q. It is a one cell micro-organism?

A. Right, one cell.

Q. And I believe in the laboratories you all breed them constantly and it has a life expectancy of about 16 or 18 days, is that right?

Mr. Warren: I object to that. What goes on in the laboratory has nothing to do with it.

The Court: If it has to do with teaching of what is in this book he can ask about it.

Mr. Bennett: Did you read Chapter 39, Mr. Warren?

Mr. Warren: Yes, sir, I copied it off for you.

Mr. Bennett: Q. Mrs. Epperson, do you believe that like species produce [112] like species only?

Mr. Warren: I object, Your Honor.

The Court: Objection sustained. It is not a question of what she believes. If you have some questions.

Mr. Bennett: Have you read Chapter 39, if it please the Court?

The Court: If you are requesting this witness to show she is teaching something that is not contained in Chapter 39, go ahead, but she says she is going to teach it and doesn't propose to teach anything contrary to it. I don't believe she said she is teaching it, but she proposes to teach it if it is legal to do so.

Mr. Bennett: Q. Who is Dr. and Mrs. L. S. B. Leakey?

A. I believe they would be called anthropologists, probably.

Q. Have you read any books by them?

A. I don't believe I have.

Q. They are prominently mentioned in Chapter 39?

A. Yes, sir.

Q. And they are quoted as excavating and studying fossils, [113] I believe in South Africa, around Tanganyika. Have you checked to see what their deductions were?

A. Well——

Mr. Warren: I object.

Mr. Bennett: I want to find out about Dr. Leakey.

Q. You are going to teach about him?

A. I know he is an Anthropologist and I wish to acquaint my students with what is in the chapter.

Q. But you are going to take it for face value, everything Dr. Leakey says?

A. No, sir, I have read in other places about Dr. Leakey and his wife. Not books that they wrote, but I have read in other books about them.

Q. Is there anything in Chapter 39 about the Piltdown Man?

A. I believe it is mentioned as a possible hoax.

Q. That was a fossil found in Sussex, England?

A. I believe so.

Q. It was a planted fossil I think that was later on found out, is that correct?

A. Yes, sir.

[114] Q. So for many years the scientists believed in the

Piltdown Man only to find out it was a hoax, is that correct?

A. Yes, sir.

Q. Have you ever seen a picture of the Australophithecus?

A. Sir?

Q. Have you ever seen a picture of the Australophithecus? Have you ever seen a model of that particular animal?

A. I believe I have.

Q. Where is that?

A. I believe there is a picture of it in the book.

Q. You said you have a picture there. What do they call him?

A. According to the text, Australophithecus was considered a dead end.

Q. Is there still a missing link between the Darwin theory and the age of life?

A. Yes, sir.

Q. Creation.

A. I am not sure I understand what you mean.

Q. There is also some researching in Chapter 39 and also some Gorilla heads, is that right?

A. I believe they do.

Q. Ma'am?

[115] A. Yes, sir.

Q. Is there anything in Chapter 39 which says that modern day man descended from these?

A. The Chapter states that Darwin had a theory on this idea.

Q. But there has been ng proof of it?

A. Oh, no, sir.

Q. Have you attended the American Museum of Natural History?

Mr. Warren: I object.

The Court: Objection sustained.

Mr. Bennett: Q. You have heard of conflicting theories, haven't you?

A. Yes, sir.

Q. Are you going to teach those?

A. Surely.

Q. What theories are those you are going to teach besides Darwin's?

A. One theory which I have already taught to my students was the theory of spontaneous generation, the idea that matter such as rags or something could give rise to mice.

[116] Q. Rags can give rise to mice?

A. That is a theory which has been disproven. It is simply an interesting theory in the study of history of biology and one thing we tell our students about it. We also go through the work and the experimentation of men who disproved this theory and show how they disproved it and, of course, we believe now that life comes only from preceding life.

Q. I believe in Chapter 39 they talk about the Java Man, don't they?

A. I believe they do.

Q. What particular part of an anatomy of someone or some animal was found and later on adding some plaster paris casts to it was called the Java Man? What part of the anatomy?

A. I believe it was part of the skull.

Q. Part of the skull? The top or lower?

A. I don't know. I'd have to look it up.

Q. Do you have out there as additional material for the students any figures showing the skeletons of various—any pictures, I mean, showing the skeletons of various animals as contrasted with man?

A. I don't believe these are shown in the book, except for the skulls that were shown, pictures of the skull.

[117] Q. Back on page 544 of the book it shows Dr. L. S.

B. Leakey examining a skull of some kind of a creature. Have you investigated to see if that was a complete skull that he is looking at, or if it was a jaw bone and a skull built around it?

Mr. Warren: I object.

The Court: All of these questions are immaterial. You can ask her some questions on cross-examination if you are trying to show here that possibly she is not following or teaching what is in the book.

Mr. Bennett: I want to see how far she has gone to ascertain what in this book she is going to teach the pupils of the State of Arkansas.

Mr. Warren: I object.

The Court: Objection sustained.

Mr. Bennett: Q. Mrs. Epperson, if the theory of Darwin is a false [118] theory is it still reasonable to teach it?

Mr. Warren: I object to that. That is certainly a question of law.

Mr. Bennett: It is a question of fact or whether or not it is false or true.

Mr. Warren: You didn't ask her if it was false or true. You said if it is false is it reasonable for her to teach it. That is for the Court to determine.

Mr. Bennett: Q. You don't know whether it is false or true, do you, Mrs. Epperson?

A. No, sir.

Q. Who sets the curricula out there at the school?

A. I imagine the school administration does.

Q. Is it mandatory that these children take biology?

A. I believe they have to have it to graduate.

Q. They have to have it?

A. Yes, sir.

Q. Is it mandatory that the children go to school in Arkansas [119] until they are 16 years of age?

A. Yes, sir. That is my understanding.

Q. Have you talked to the Principal or the Superintendent about this matter since the filing of this law suit?

Mr. Warren: I object, Your Honor. It is thoroughly immaterial. It is completely immaterial for him to bring somebody else into the law suit that is not properly in it.

The Court: She said she proposes to present or teach or explain this theory under the authority of the school officials. If the question is directed to that statement, he might ask her.

Mr. Bennett: That's right.

Q. This is April and school is almost out and you have not taught Chapter 39?

A. No, I have not.

Q. Have you talked to your Superintendent or Principal about teaching it?

A. About teaching it?

Q. Yes, sir.

[120] A. No, not about teaching it.

Mr. Bennett: That is all.

Mr. Warren: I have no further questions, Your Honor.

The Court: Do you have any questions, Mr. Friday?

Mr. Friday: No questions.

The Court: You may stand aside.

(Witness Excused.)

[121] HUBERT BLANCHARD,

Intervenor herein, having first been duly sworn, testified as follows:

Direct Examination,

By Mr. Warren:

Q. Will you please state your name?

A. Hubert Blanchard.

Q. Where do you live, Mr. Blanchard?

A. 3417 Pope Avenue, North Little Rock.

Q. Where were you born?

A. Sulphur Rock, Arkansas.

Q. Where?

A. Sulphur Rock. That is in Independence County.

Q. Are you married?

A. Yes, sir.

Q. Do you have children?

A. Yes, I have two sons age 15 and 17.

Q. Age 14 and 17?

A. 15 and 17.

Q. 15 and 17?

A. Yes, sir.

Q. What is your occupation, Mr. Blanchard?

A. I am Assistant Executive Secretary of the Arkansas Education Association.

[122] Q. You appear here in your individual capacity as a citizen and taxpaper?

A. Yes, sir.

Q. And not as an official of the A. E. A.?

A. Correct.

Q. Give me a short history of your education, Mr. Blanchard.

A. I attended elementary school and graduated from high school at Egypt, Arkansas. I attended the University of Arkansas. I have a bachelor's degree and a master's degree from the University and a diploma for advanced study in the School of Administration, all from the University.

Q. Now, what was your occupation prior to your present position that you hold?

A. I was a County School Supervisor.

Q. You are the Intervenor in the present law suit?

A. Yes, sir.

Q. Mr. Blanchard, in your intervention you asserted that you wanted your children to have the benefit of scientific knowledge, or scientific theories. You felt that your children had a right to learn. What scientific theories do you want your children to have the right to be taught?

A. I have a 15 year old son in the 10th grade who is taking [123] biology. They have the same text in North Little Rock. I want him to have the material, that is, to be exposed to the material that is in the text.

Q. That is the same book that Mrs. Epperson is using here?

A. Yes, sir.

Q. Now, with reference to the 17 year old, what do you feel that is right or at least legal for him to be taught?

A. To have a background of scientific information in college, I am interested in this for both of them, a broad, general education, including thorough grounding in science, including the material on evolution that is contained in the text books that are being used now in some of the private colleges in the state.

Q. Now, just what private colleges do you have reference to?

A. I have excerpts from text books that are being used in the course in biology at Ouachita Baptist College, Arkansas Baptist College at Conway. There is material in there that I think is essential to complete an education in the field of science.

[124] Q. One of those text books is edited by an Arkansas man, isn't that correct?

A. Yes, sir.

Q. Is that text book also being used at State Teachers College?

A. Yes, it is being used at State Teachers College and Arkansas Baptist College. The author is professor of biology at State Teachers College.

Q. Do those excerpts which you have from those text books contain explanations of the Darwin Theory of the ascent of man?

A. Yes, they do.

Mr. Warren: I would like to introduce these and ask that they be marked as Exhibit No. 3.

The Court: Let it be introduced.

(Thereupon, said excerpts were marked for identification as Exhibit No. 3 and received in evidence.)

Mr. Warren: I believe that is all.

Cross-Examination,

By Mr. Bennett:

[125] Q. Mr. Blanchard, you have been a school official and a school administrator for a number of years, is that right?

A. Yes, sir.

Q. Is it your belief that the school officials must have some uniform school curriculum to go by?

A. I think the school curriculum is best determined by school officials.

Q. I think so, too.

A. With the help of their teachers.

Q. By school officials and not the teachers, is that right?

A. I say with the help of the teachers. The teachers have a role in it. So do the school administrators.

Q. You know of our statute which makes it mandatory to teach the effects of alcohol and narcotics on the human body, in our public schools?

A. I have heard of such a law, I believe.

Q. Do you know of a statute on our books passed by the legislature which makes it mandatory that American History and Arkansas History be taught in the schools?

A. I believe so.

Q. Those are affirmative statutes saying we must teach those subjects and it is your opinion, the way I get it in your complaint, that you think the school's curriculum—I will quote from your Intervention: ". . . that scholars be [126] informed of what may not be believable, as well as what may be believable and academic freedom to learn demands that the scholar, and not a political majority, shall have the right to select what to him is believable and

what is not believable." Is that your attitude as a school man?

A. Yes, sir.

Q. Would you object if some teacher wanted to teach your children under the guise of academic freedom a theory that God is dead?

A. I don't believe that is pertinent to this case.

Q. You want to open the class rooms up for the teaching of various theories, is that right, to be selected by the teachers?

A. Within reason, yes.

Q. All right. Have you heard of more than one theory of evolution?

A. I am not sure that I have.

Q. You have not heard anything but the Darwin theory, is that right?

A. Darwin, as I understand it, is just a part of the theory of evolution. Evolution is much broader.

Q. Have you read Chapter 39 of this book that your children bring home? Have you read Chapter 39?

[127] A. Yes, sir.

Q. Does it mention any other theory of evolution in there besides Darwin's theory?

A. I didn't find it.

Q. So you want them taught the Darwin theory to the exclusion of all the other theories, is that right?

A. The law does not exclude teaching the other theories.

Q. The law excludes teaching any theory, doesn't it?

A. No. The law excludes teaching that man ascended or descended from a lower order of animals.

Q. Which is the theory of evolution, is that right, being frank about it?

The Court: He says it is a part of the theory, not the whole theory.

Mr. Bennett: Q. That is the way you interpret it, isn't it?

Mr. Warren: I object to his interpretation. It has absolutely nothing to do with it.

Mr. Bennett: Q. As a school man, the statement that you think the curriculum should be set by the teachers——

[128] Mr. Warren: Objection, Your Honor. He didn't make that statement.

Mr. Bennett: I quote from the allegation in the Intervention, sir.

The Court: Go ahead.

Mr. Bennett: Q. That says this: ". . . that scholars be informed of what may not be believable, as well as what may be believable and academic freedom to learn demands that the scholar, and not a political majority, shall have the right to select what to him is believable and what is not believable."

Mr. Warren: That has absolutely nothing to do with the statement you made that he said a curriculum should be selected by the teachers.

Mr. Bennett: Q. How do you think they ought to select the curriculum?

Mr. Warren: I object.

The Court: He is withdrawing that question, as I understand [129] it and propounding another one.

Mr. Bennett: Q. Who do you think should select the curriculum to be taught to the 10th Grade of the School of North Little Rock, the school board or the teachers?

A. The teachers and the school administration.

Q. You have been a superintendent of schools?

A. Yes, sir.

Q. When you made up the curriculum for your school, it was adopted by the school board, is that right?

A. The school board has very little to do with the curriculum. They may have approved it.

Q. They approved it, is that correct?

A. They may or may not. I think probably in most school districts they do.

Q. Did they approve yours?

A. I think so.

Q. When you were superintendent of the school you didn't let the teachers teach anything they wanted to, did you?

The Court: You are getting into the field of what the school board authorizes or delegates the authority to do. [130] Mr. Bennett: There must be some uniform system of conducting the schools and somebody has to administer the schools. Mrs. Epperson testified she doesn't have any written or oral authority permitting her to teach Chapter 39 and the school board has not instructed her to teach it and the State law says she shall not teach it. Now, Mr. Blanchard comes along——

The Court: Just a minute. He said the school board either approves or gives the administrators and the teachers authority to set up the curriculum.

Mr. Bennett: I asked who approved the curriculum and he said the school board.

Mr. Warren: No, he didn't. He said sometimes they did and sometimes they didn't. Quote my witness right.

Mr. Bennett: Q. When you were superintendent of schools—let's go back. Before you went with the A. E. A. did you as superintendent make up a curriculum to be taught in the schools that you were administering?

[131] A. Yes, but I never made it up by myself.

Q. All right.

A. Teachers were involved in it.

Q. The prime responsibility for the curriculum was yours, is that right?

A. Correct.

The Court: Was that responsibility delegated to you by the school board?

A. Yes, it was.

Mr. Bennett: Q. So the ultimate responsibility for the curriculum is the elected school board?

A. Yes, I would think that is so.

Q. And the teachers were employees of that school board and that school district?

A. Yes.

Q. And did you have control of the teachers as superintendent, during the hours for which they were employed, during school hours?

Mr. Warren: I object.

The Court: [132] I don't think that has a thing to do with this.

Mr. Bennett: It has very much to do with it, an employer and employee relationship.

The Court: As I understand it, you say you set up the curriculum under the authority of the board, but did you say that you would not adopt or use a curriculum against the wishes of the board?

A. Yes, sir, that is correct.

Mr. Bennett: Q. The teachers were under your employment during the school hours, is that right?

A. Yes.

Q. And you, as superintendent, supervised them, is that right?

A. Yes.

Q. And there was an employer-employee relationship, is that right?

A. I suppose so.

Mr. Warren: I object, Your Honor.

Mr. Bennett: Q. Did your teachers sign a contract of employment?

[133] Mr. Warren: I object again, Your Honor. What does this have to do with what happened in Pocahontas or Walnut Ridge, wherever you were school superintendent?

Mr. Bennett: He was a school superintendent and the same state laws apply to him as anybody else.

Mr. Warren: He did not qualify as a school superintendent, but as a citizen and individual.

Mr. Bennett: Q. Didn't you say awhile ago you have been a school superintendent?

A. Yes, but I am appearing here in the role of a parent and taxpayer.

Mr. Warren: I was an employee of the U. S. Navy, but I am here as a lawyer today. It makes no difference what he has been.

The Court: That's right.

Mr. Bennett: Q. Don't you think it is important to know what constitutes an employer-employee relationship?

[134] The Court: Mr. Bennett, he has answered your question by saying that he helped, with the teachers and other administrative officials, set up a curriculum under the authority of the school board.

Mr. Bennett: He wants the teachers to set up a curriculum.

Mr. Warren: That statement isn't true. The intervention says the child has a right to believe what he wants to believe and I think that is the American way.

Mr. Bennett: Q. What do you mean when you state: ". . . and academic freedom to learn demands that the scholar . . ." You are talking about your two children?

A. Yes, sir.

Q. ". . . and not a political majority . . ."

A. Yes, sir.

Q. An elected school board, is that correct?

A. No, that is not the political majority we are talking about here. We are talking about the political majority that voted for the evolution law.

Q. ". . . shall have the right to select what to him is believable and what is not believable . . ."

The Court: [135] It doesn't say whether it shall be taught or not taught. It says whether he believes or does not believe. That is entirely different.

Mr. Bennett: Q. If you don't propose but one theory, how can—when there is 40, how can you make a decision as to whether it is believed or disbelieved? If you don't propose but one theory, how do you know whether it is believable or not?

The Court: You will have ample time to argue this case after the testimony.

Mr. Bennett: Q. So you want taught one theory only?

A. I have not said that.

Q. The only theory in the book is the Darwinian theory, isn't it, sir?

A. I want them taught what is in their book.

Q. That is the book your children are studying?

A. And when they get to college I want them taught what is in these books.

Q. But this is the book that we are talking about now and you want them taught only one theory, is that right?

A. There is only one theory outlawed as I understand it and that is what we are talking about.

[136] Q. You think as a school official and former superintendent of schools that the mere fact that Chapter 39 is in that book, they should authorize its teaching in contravention of state law?

Mr. Warren: I object.

The Court: That is a conclusion and the objection is sustained.

Mr. Bennett: Q. You are the parents of some children?

A. I have two of them.

Q. And it is your assertion to this Court that one parent's wish should control over the great majority of the rest of the people of the State of Arkansas?

Mr. Warren: Your Honor, the question involved here is whether a citizen of the State of Arkansas has a right to attack the constitutionality of a statute and apparently the Attorney General seems to think that if a person avails himself of that constitutional right he has committed a heinous wrong. I see nothing despicable about a citizen coming into this Court and asking this Court for his determination of the constitutionality of the law. [137] You said did he think it was right for one party——

Mr. Bennett: That is his allegation.

Mr. Warren: He is a parent that attacks the validity of that law and he has that right.

The Court: He has the right to attack it.

Mr. Bennett: I think he does.

Mr. Warren: All right, don't criticize him for it.

Mr. Bennett: Q. You have not read Chapter 39, have you?

A. Yes, sir.

Q. Have you had any courses in biology?

A. Yes, I have.

Q. How long ago?

A. The late 30's.

Q. The Darwin theory was in the book then, wasn't it?

A. I don't know. I don't remember.

Q. Where did you get exposed to the Darwinian theory?

[138] A. It is in books in the library. You can find it in innumerable places.

Q. You have never been at—in a class room where it was taught, have you?

A. No, I have not.

Q. So you have never had it explained to you or taught to you, you have just read it?

A. Yes, sir.

Q. Sir?

A. Yes, sir.

Q. And you are a school man and this is something that I have always wondered. What do you mean by "academic freedom?"

Mr. Warren: I object, Your Honor. "Academic freedom" is a question of law.

Mr. Bennett: That is a phrase they all use. I would like to find out what it is.

Mr. Warren: The truth of the matter is you pulled that out of the hat in cross-examining him.

The Court: I don't think you ought to ask the question of what he means by the use of terms.

[139] Mr. Bennett: I think it is very basic to find out

what they mean when they say "academic freedom". Does that mean freedom to teach without restraint?

Mr. Warren: "Academic freedom" is not contained in the complaint. I will be happy to explain it to General Bennett when we argue the case.

Mr. Bennett: Q. Do you think as a parent and as a citizen of this state that all theories, believable and unbelievable, should be brought into the class rooms of this state as theories?

Mr. Warren: I object, Your Honor.

Mr. Bennett: I want him to answer that question, Judge.

Mr. Warren: I know that you do and I don't want him to. That is an improper question.

Mr. Bennett: That statement comes from the intervention that said the children had the right to select what was believable and unbelievable.

The Court: [140] He has testified what he proposes to do, is to operate under the direction and authority of the school board and the curriculum that is set up by the board, together with the teachers and administrators and I assume he wouldn't want to teach some other.

Mr. Bennett: Q. Mr. Blanchard, here is your Intervention, signed by your attorney and on page two, along at the bottom, you use the words, "academic freedom to learn". What do you mean by "academic freedom to learn"?

Mr. Warren: I object. That is a legal term and we will discuss it.

The Court: It is a legal term, but if he has an answer, go ahead.

The Witness: A. "Academic freedom" means the freedom to—of the teacher to teach the material that is in the prescribed curriculum in the text book.

Q. Did you say "prescribed curriculum"?

A. Yes, and in the text book. Biology is a part of the prescribed curriculum of the North Little Rock Schools [141] where my children attend schools.

Q. That's right.

A. And the school has adopted this text book, which means I assume they have adopted what is in it. So "academic freedom" is the freedom of the teacher to teach that, the children to study it, and then make up their minds what they want to believe.

Q. And ignore the state law?

Mr. Warren: Objection, Your Honor.

Mr. Bennett: He says teaching of what is in the book and the state law says you shall not teach it.

The Court: That is the reason for this law suit.

Mr. Bennett: Q. And I am asking you if, under your interpretation of "academic freedom", it means teaching what is in that book and ignoring the state law? Is that your idea?

Mr. Warren: The Intervenor brought this law suit to determine the constitutionality of it. He doesn't propose to teach it [142] if it is contrary to the law, but he is testing the validity of the law. That is all there is to it.

The Court: He doesn't think the law is valid and he brought the suit. That answers your question, doesn't it? If the law is valid then he will not teach it.

Mr. Bennett: The question was what he means by "academic freedom" and he started explaining it.

The Court: He did, as I understand.

Mr. Bennett: Q. Let me ask you this way then. Do you believe that "academic freedom" means that the curricula should be set by the school teacher and not the elected school authority?

Mr. Warren: He has answered that. He has answered it three times.

A. I think I have answered that question.

Mr. Bennett: Q. Answer it again.

A. By the school——

Mr. Warren: [143] There is no sense in heckling this witness.

The Court: Let him repeat his answer and you can save time.

A. By the school administration, with the participation of the teachers, subject to the approval of the Board of Education.

Mr. Bennett: Q. Do you know whether or not the North Little Rock School Board approved Chapter 39 for teaching over there?

A. I do not. I doubt that the Little Rock—I mean the North Little Rock School Board has seen Chapter 39.

Q. Has your children come to you and said, "we are not going to be taught Chapter 39"?

A. They came up to Chapter 39 and skipped it.

Q. When did they come up to Chapter 39? This law suit was filed in December.

A. I don't know, but they are past Chapter 39 now. It has been skipped.

Mr. Bennett: I believe that is all.

Mr. Warren: I have no further questions.

Mr. Friday: No questions.

(Witness excused.)

[144] Mr. Warren: The plaintiff rests, Your Honor.

Mr. Bennett: In order to make a record, I have an authenticated copy of Initiated Act No. 1, by the Secretary of State—prepared by the Secretary of State, which I would like to introduce.

Mr. Warren: No objection.

The Court: Let it be introduced.

(Thereupon, said authenticated copy of Initiated Act No. 1 of 1929 was marked for identification as Exhibit No. 1 and received in evidence.)

Mr. Bennett: I have another authenticated copy of Act 168 of 1937, which makes it mandatory to teach the effects of alcohol and narcotics on the human system in the schools of Arkansas.

Mr. Warren: I object, because it encumbers the record. If one of these parties appeal they will have to reproduce this at considerable expense and the law of Arkansas is that the enacted Acts of Arkansas are all part of the record. [145] There is no necessity of encumbering that record with that and that is the only purpose of it.

Mr. Bennett: Let's see how much you encumbered it. Here is nine pages and I want to introduce five pages.

Mr. Warren: All he has to do is cite the state statute.

Mr. Bennett: He introduced 21 pages.

The Court: That is not a state statute that he introduced.

Mr. Bennett: It is going to be part of the record. Are you denying us the right to introduce the state statute into the record?

The Court: The statutes are already in the record.

Mr. Warren: He is counsel just like I am counsel. The State of Arkansas is no bigger than the plaintiff in this case.

The Court: You could introduce all of the statutes in the State on any subject on that theory, couldn't you?

Mr. Bennett: Are you denying me the right to introduce the [146] state statute into the record?

The Court: No. I don't think the instrument you have here, picking out a statute on some other subject, is material to the issue here. You can put it in the record for the record.

(Thereupon, said copy of Act 168 of 1937 was marked for identification as Exhibit No. 5 and admitted for the record.)

Mr. Warren: I object to each one of them on the grounds that it encumbers the record.

The Court: I am letting them in the record, but ruling them immaterial to the issue before the Court.

Mr. Bennett: I want to introduce an authenticated copy

of Act 169 of 1931, which is our compulsory school attendance law and it also includes a provision that teaching is to be in the English language; that we shall teach good morals and manners and teach physical education, all mandatory state statutes.

The Court: Let it be admitted for the record.

(Thereupon, said Act was marked for identification [147] as Exhibit No. 6 and admitted for the record.)

Mr. Bennett: I would like to introduce as Exhibit No. 7 an authenticated copy of Act 147 of 1927, which is the statute that makes it mandatory to teach fire prevention in the grammar schools of the State of Arkansas.

The Court: Let that be admitted for the record.

(Thereupon, said Act was marked for identification as Exhibit No. 7 and admitted for the record.)

Mr. Bennett: I want to introduce an authenticated copy of Act 614 of 1923.

The Court: Mr. Warren, do you object to all of these?

Mr. Warren: Everyone of them, Your Honor.

The Court: The one on compulsory attendance, I think might be admissible under this situation.

Mr. Warren: Under the law of Arkansas, the Arkansas State Statutes are merely cited. They are not introduced. He could [148] just as well go get a volume of Arkansas Statutes and put the whole thing into the record to make it expensive on us to reproduce the record. That is the purpose of it.

The Court: Go ahead.

Mr. Bennett: I want to introduce a copy of Act 614 of 1923, which makes it mandatory that American History shall be taught in the schools of Arkansas.

The Court: Let it be admitted for the record.

Mr. Warren: Objection.

The Court: Note his objection.

(Thereupon, said Act 614 of 1923 was marked for identification as Exhibit No. 8 and admitted for the record.)

Mr. Bennett: I would like to introduce an authenticated copy of Act 355 of 1957, which makes it mandatory——

Mr. Warren: Objection.

The Court: Note his objection and let it be admitted for the record.

[149] (Thereupon, said Act 355 of 1957 was marked for identification as Exhibit No. 9 and admitted for the record.)

Mr. Bennett: And I would like to introduce an authenticated copy of Act 312 of 1939, which makes it mandatory that the conservation of natural resources shall be taught in the public schools of Arkansas.

The Court: Let that be admitted for the record.

(Thereupon, said Act 312 of 1939 was marked for identification as Exhibit No. 10 and admitted for the record.)

Mr. Bennett: The State would like to call Mr. Herschel Lee.

The Court: All right.

[150] HERSCHEL LEE,

a witness on behalf of the defendants, having first been duly sworn, testified as follows:

Direct Examination,

By Mr. Bennett:

Q. State your name.

A. Herschel Lee.

Q. Where do you live?

A. Swifton, Arkansas.

Q. What is your profession?

A. Superintendent of Schools, Swifton, Arkansas.

Q. How long have you been there, Mr. Lee?

A. Three years.

Q. Go ahead in your own words and outline your educational achievements.

A. I graduated from Star City High School in 1952 and have a B. S. Degree from Arkansas A. & M. College, and a major in English and a minor in Social Science, and a Master's Degree in School Administration from the University of Arkansas.

Q. As Superintendent of the Schools at Swifton, Arkansas, you are employed by an elected School Board up there?

A. Yes, sir.

[151] Q. And they in turn have employed a number of teachers which are under your administration?

A. Yes, sir.

Q. I think you have been in the Court Room and you know what this law suit is about and the sole question that will probably be determined is whether or not Initiated Act No. 1 of 1928 is reasonable legislation passed by the people of the State of Arkansas. Based upon your experience as School Superintendent and knowing the children under your administration and the teachers, do you think that Initiated Act No. 1 of 1928 is a reasonable statute to be administered by the school people?

Mr. Warren: I object, Your Honor. That is completely immaterial, irrelevant and improper.

The Court: I think that is a question for the Court, Mr. Bennett.

Mr. Bennett: Yes, sir, but the school people who are in day to day association with these things, Judge, they are professionals.

The Court: You can ask him as to whether certain facts or things are reasonable.

[152] Mr. Bennett: I am asking an expert whether or not

the statute is reasonable in conformance with school policy of the State of Arkansas.

Mr. Warren: If it becomes a question then, if this sort of question is proper, as to who has the finances to go out and get enough witnesses and parade them in infinitus, I will freely concede Mrs. Susan Epperson can't match that of the State of Arkansas.

Mr. Bennett: What has finances got to do with it?

Mr. Warren: You would parade witnesses for hours, use the financial availability of your office and bring one witness after another in here.

Mr. Bennett: Give me the list of the witnesses you want to call and the State of Arkansas will pay for them.

Mr. Warren: I am sure you would.

The Court: I don't think his opinion as to the reasonableness [153] of the Act is material here. That is the question that is before the Court and for the Court to decide.

Mr. Bennett: How is the Court going to decide unless he hears from experts?

The Court: Hear the facts about it, but not his conclusions as to the reasonableness of the Act. That is a matter to be determined by the Court.

Mr. Bennett: Eventually, yes, sir.

The Court: You are asking him for a generalized conclusion. You can ask him about some facts that might throw some light on whether or not it is unreasonable, but you are asking for a conclusion.

Mr. Bennett: Q. Do you think Initiated Act of—Initiated Act No. 1 of 1928 is an unreasonable statute?

Mr. Warren: To which I object.

The Court: Objection sustained.

[154] Mr. Bennett: You said I could ask him about the unreasonableness of the Act.

The Court: I said if you wanted to ask him about some factual matters that might indicate that it was unreasonable you can do that, but not for a generalized conclusion.

Mr. Bennett: As I understand it, you overrule my question?

The Court: If you want to ask him about a factual matter that tends to show that the Act is unreasonable you may do that, but not a generalized conclusion.

Mr. Bennett: I don't think it is unreasonable.

The Court: You have asked him the question, so I say that is a general conclusion. In that form, I don't think it is admissible.

Mr. Bennett: Q. You, as a school administrator, adhere to state law, don't you?

A. Yes, sir, I attempt to.

[155] Q. Your teachers sign a contract?

A. Yes, sir.

Q. And in that contract, it provides that the teachers shall also obey state law, is that right?

A. Yes, sir.

Q. Now, they are not teaching the Darwin theory in the schools of Swifton, are they?

A. No, sir.

Mr. Warren: I object to that and move that it be excluded. It doesn't make any difference what they teach in Swifton, as to whether or not that law is constitutional.

The Court: That's right. There is no dispute in this case about complying with state law. That is exactly the reason I understand this suit was brought, in an effort to determine what the state law is and it only said that both sides want to comply with the law.

Mr. Bennett: If the statute on the books has any adverse effect on the children in Swifton.

Mr. Warren: How could you tell whether or not teaching a snbject has had any adverse effects?

[156] Mr. Bennett: If it hasn't had any adverse effect it is a reasonable statute.

Mr. Warren: That is sort of like a man who is five feet nine and you ask him if his short height has had any effect and he says, "I have never been any taller."

The Court: I am trying to keep down argument until the testimony is over, if I can. He has answered your question it is not taught there. That is one of the factual things. Go ahead.

Mr. Bennett: Q. Have you had any parents or anybody up there requesting you to teach evolution?

A. No, sir.

Q. Who selects the text books to be taught at Swifton?

A. The same as hers, the board. I have a group of teachers to look through and pass on or recommend certain books and I pass this on to the board and the board, of course, according to state law, has the final say in what books are adopted.

Mr. Bennett: If the Court please, for the record, and I know that you are going to overrule the question, but I want to [157] ask the question and get the answer for the record.

The Court: I don't know whether I will or not. I will have to hear it first.

Mr. Bennett: Q. As a school official of this state, do you think Act No. 1 of 1928 is reasonable?

Mr. Warren: Your Honor, I want to object and I further want to object to him putting the answer in. We are opening the door. He is not interested in that answer.

The Court: I have already ruled.

Mr. Warren: He wants him to answer and we can go on here two or three days and maybe a week. He has a right to make a proffer.

The Court: I don't think it is admissible.

Mr. Bennett: For the record, will you let him answer the question?

Mr. Warren: The law of Arkansas is he can make a proffer. He can state if allowed to testify what he will say, the General [158] can. This is the attorney's privilege, or he can file a written statement.

The Court: It doesn't make any difference. It is a yes

or no answer. What do you say his testimony will be if permitted to answer?

Mr. Bennett: He will answer "yes".

Mr. Warren: All right.

The Court: That takes care of it.

Mr. Bennett: I told some other witnesses to be here at 1 o'clock.

The Court: It is about 12, so we will recess until 1 o'clock.

(Thereupon, at 12 Noon the hearing was recessed until 1 o'clock, p. m.)

[159] SUSAN EPPERSON,

recalled by the defendants, and under the same oath, testified further as follows:

Direct Examination,

By Mr. Bennett:

Q. Mrs. Epperson, have you ever read Initiated Act No. 1 of 1928?

A. Is this the law that we are talking about?

Q. Yes.

A. Yes, I have read it.

Q. And you said this morning, I believe, that you and a committee of teachers selected this book that has Chapter 39 in it?

A. Yes, sir.

Q. Were you aware then that you violated the law by being on a text book selection committee and selecting such a book?

Mr. Warren: She said she and a group of teachers voted on it and then the school board, the proper officials, adopted it.

The Court: I understood her to say the board adopted it.

Mr. Bennett: [160] Q. Were you asked to be on a committee to recommend the book?

A. We voted on several books.

The Court: I think you went over that this morning.

Mr. Bennett: Q. You were on a committee to select this book?

The Court: I see no need of repetition of the same thing you went over this morning.

Mr. Bennett: I am trying to show the Court she violated the law way before the law suit was brought, thereby breaching her contract with the Little Rock School Board.

The Court: You asked that this morning. Ask something new, She said she was on the committee and participated in it. You asked all of those questions this morning.

Mr. Bennett: Do you mind if she answers the question for the record?

The Court: I don't want you repeating the same thing for the record.

Mr. Bennett: I didn't ask her this morning if she was conscious [161] of the fact she violated the law when she helped select this book.

Mr. Warren: It must be a legal, constitutional law before you can violate it and I would rather she not answer the question.

The Court: Objection sustained.

Mr. Warren: She did not violate the law.

Mr. Bennett: Q. Have you had any parents, other than Mr. Blanchard, say this Act would have an adverse effect on their children?

Mr. Warren: I object to that.

The Court: I think that is all right, if she had any parents tell her that.

A. If I had any parents tell me that the law would have an adverse effect?

Mr. Bennett: Q. Adversely affected their children?

A. No, I have not.

Mr. Bennett: That is all.

Mr. Warren: [162] That's all.

Mr. Bennett: Just a minute.

Q. Have you had anybody in the community that doesn't have any children in school tell you that this Act on the books would have an adverse effect on the community?

Mr. Warren: Is this material?

The Court: I think she can answer it. Go ahead. I don't think it is material, but let her answer it.

A. No, sir.

Mr. Bennett: We are trying to determine if it is a reasonable statute.

The Court: Don't argue with the witness. She answered the question.

Mr. Bennett: Did she say "no"?

The Court: Yes.

Mr. Bennett: [163] Q. You have not had any school children say that the statute has had an adverse effect upon them, have you?

A. No, sir.

Mr. Bennett: That is all.

Mr. Warren: I have no questions.

(Witness excused.)

[164] HERSCHEL LEE,

recalled by the Defendants, and under the same oath, testified further as follows:

Direct Examination,

By Mr. Bennett:

Q. Mr. Lee, this morning I believe you said you had been in the public schools some 13 years?

A. No, sir, only 5 years.

Q. As Superintendent of the Schools at Swifton, have you had any of the children up there say the presence of

this Act on the statute books of Arkansas is having an adverse effect upon their education?

Mr. Warren: I object, Your Honor.

The Court: Objection noted. Let him answer.

A. No, sir.

Mr. Bennett: Q. Have any of the parents that have children in the public schools of Swifton stated on any occasion that the presence of this statute was having an adverse effect upon their children in the schools?

A. No, sir.

Q. Have you had any other individuals in the community or county communicate with you that the presence of that statute on the books is having an adverse effect upon the county or [165] community?

Mr. Warren: I object to all of that.

The Court: You are objecting to all of it and I am letting him answer it for the record.

A. No, sir, they have not.

Mr. Bennett: Q. As far as you are concerned, the statute is on the books and you have abided by it and nobody has objected?

A. That is true.

Mr. Bennett: I believe that is all.

Mr. Warren: I have no questions.

(Witness Excused.)

[166] JAMES O'DELL,

a witness on behalf of the defendants, having first been duly sworn, testified as follows:

Direct Examination,

By Mr. Bennett:

Q. State your name.

A. James O'Dell.

Q. Where do you live, Mr. O'Dell?

A. Thornton, Arkansas.

Q. Thornton, Arkansas?

A. Yes, sir.

Q. Calhoun County?

A. Yes, sir.

Q. What is your profession, sir?

A. Superintendent of the Schools at Thornton School District.

Q. How long have you been in the teaching profession?

A. 16 years.

Q. How long have you been Superintendent?

A. 8 years.

Q. You are aware that we have on the statute books of Arkansas Initiated Act No. 1, passed by the people in 1928, a statute which prohibits the teaching that mankind, human beings, ascended or descended from a lower form of animal? You know [167] about the statute?

A. Yes, sir.

Q. Have any of the school children——

The Court: Mr. Bennett, I might make this suggestion off the record.

(Off the record discussion.)

The Court: Will this witness testify the same as the previous witness on the questions about adverse effect?

Mr. Bennett: We are trying to show the statute is a reasonable statute. It won't take 5 minutes.

Mr. Warren: It won't take one minute for me to stipulate this witness will give substantially the same answers.

Mr. Bennett: Q. Do you know of any school children in your school district that have stated to you or any other teacher that the presence of this statute on the statute books have adversely affected them or their education?

A. No.

Mr. Warren: Objection.

[168] The Court: Your objections are noted.

Mr. Bennett: Q. Do you know of any adverse effect this statute has had on the schools of Thornton, Arkansas?

A. No.

Q. Has any parent or any other individual in your school district complained to you that this statute has had or is having an adverse effect upon the scientific education that they are receiving in the Thornton School District?

A. No.

Mr. Bennett: That is all.

Cross-Examination,

By Mr. Warren:

Q. Mr. O'Dell, is the Darwinian Theory of the evolution of man taught in Thornton?

A. Well, I was not aware that that particular theory was the evolution of man.

Q. Is the theory of the evolution of man taught in Thornton?

A. As a species, yes, sir.

Q. As a species?

[169] A. Yes.

Q. But the question Mr. Bennett asked you was whether or not this Act had had any adverse effect on the children, what the children had said, or complained to you that the lack of this particular knowledge had any effect on them. Do you know whether any of them have been taught in contravention of this statute?

A. Would you ask the question again, please?

Q. Yes. Do you know whether any of the children have been taught any subject in contravention, scientific subjects in contravention of this statute, any of the subjects forbidden to be taught by this statute?

A. No.

Q. You do not know, or they have not been taught?

A. I do not know.

Q. You do not know. You don't know whether they are even acquainted with the theories that are forbidden by this statute, do you?

A. I would hope that they are not, if they are forbidden by law.

Q. If they are not acquainted, how do they know whether they have been prejudiced or not?

A. Well, I would say that not anyone knows whether or not they are prejudiced by a thing they don't know exists. [169-a] That is a rather ridiculous question.

Q. It was a ridiculous answer.

Mr. Warren: That's all.

Mr. Bennett: I have nothing further.

(Witness excused.)

[170] A. R. McKENZIE,

a witness on behalf of the defendants, having first been duly sworn, testified as follows:

Direct Examination,

By Mr. Bennett:

Q. State your name.

A. A. R. McKenzie.

Q. Where do you live?

A. Sheridan, Grant County.

Q. Do you hold at present an elective position in Sheridan, Arkansas?

A. I am Mayor of the City.

Q. And I believe you were elected Mayor following your retirement as Superintendent of the Schools?

A. About two years after, yes, sir.

Q. Mr. McKenzie, how long have you been Superintendent of Schools in Sheridan?

A. I was Superintendent 28 years. I was in the schools 38 years.

Q. You taught school 38 years?

A. At Sheridan.

Q. And you were Superintendent of the Schools 28 years?

A. That's right.

Q. We have on the statute books of the State of Arkansas Act [171] No. 1 of 1928, adopted by a vote of the people by some 106,000 to 63,000. That statute forbids the teaching that man ascended or descended from the lower form of animals. Sometimes it is called the "Monkey" bill. Now, in the Schools of Sheridan, while you were there for 38 years, did you ever have any of the school children down there complain that the statute was having an adverse effect on their education?

A. Do you mean complain to me?

Q. Yes.

A. No, sir.

Mr. Warren: Objection.

The Court: Same objection.

Mr. Bennett: Q. I imagine you have graduated literally thousands of people from the Sheridan High School, haven't you, Mayor?

A. I expect so. About that.

Q. How many would you think altogether?

A. What did you say?

Q. How many children would you think you have graduated down there?

[172] A. It runs from 60 up to about 95 per year. For 28 years.

Q. You all teach science down there, biology?

A. Yes, sir.

Q. Do you know of any parents in that 38 years that have ever complained to you or any of your staff that this Act has had an adverse or an illadvised effect upon the public schools to the educational system of Sheridan, Arkansas?

A. Complained to me directly?

Q. Yes.

A. No, sir, not to me.

Q. Do you know of anybody in the community?

A. No, sir, I don't.

Q. That has stated it had an adverse effect?

A. No, sir.

Q. As a school official for 38 years, do you think it is a proper subject for the people of Arkansas to help regulate the curricula of the public schools?

Mr. Warren: I object to that. This is a matter of opinion, which is not material here.

Mr. Bennett: The man has been teaching school for 38 years. He ought to be able to form an opinion.

[173] Mr. Warren: He hasn't been practicing law and this is a legal question.

Mr. Bennett: What you don't want answered is always legal.

Mr. Warren: Unfortunately, it is.

Mr. Bennett: I want to know if as a school official for 38 years in his opinion, and I would think he could qualify as an expert school man, whether or not the enactment of this statute is a proper province of the people of the State of Arkansas.

The Court: That would not be a proper question. You can ask the witness about any facts or situations.

Mr. Bennett: He has already testified the statute hasn't had any adverse effect.

The Court: If you want to ask him any fact or circumstance that might throw light on whether or not the Act is reasonable you might do that.

[174] Mr. Bennett: Q. You at the Sheridan Schools have biology laboratories—or laboratory equipment to look at the grasshoppers and frogs under the microscope, don't you, Mayor?

A. Yes, sir.

Q. And you have a very modern public school system, I think?

A. Well, not as good as we wanted, but as good as we can do.

Q. And you all have missed the theory of evolution for 38 years?

A. Mentioned it or missed it?

Q. Missed it.

A. The fact about it is I couldn't see any difference before or after, because as far as I was concerned, I was an Agri teacher, was my training, and there is a lot of stuff in Agri that wasn't up to par and we left that out, and I think I had good teachers, and you know how you feel, or I wouldn't be wearing that pin there. (Indicating.) And I had good teachers that knew enough to leave out what ought to be left out.

Mr. Bennett: Thank you, Mayor.

Mr. Warren: I have no questions.

(Witness excused.)

[175] ED McMILLAN,

a witness on behalf of the defendants, having first been duly sworn, testified as follows:

Direct Examination,

By Mr. Bennett:

Q. State your name.

A. Ed McMillan.

Q. Where do you live?

A. Damascus, Arkansas.

Q. What is that County?

A. Faulkner.

Q. Where do you work?

A. Conway Printing Company.

Q. Do you hold an official, elective position in the Public Schools of Greenbriar, Arkansas?

A. Yes, sir.

Q. What is that position?

A. Chairman of the School Board.

Q. How long have you been Chairman of the Board?

A. This is my first year as Chairman. I have been on the Board 4 years.

Q. Mr. McMillan, we have a statute on the books of this state, adopted by the people in 1928, which simply says that the public schools shall not have in them the teaching that man [176] ascended or descended from a lower form of animals. As a School Board Director, and as Chairman, do you know of any adverse effect the presence of that statute has had upon the school children of Greenbriar?

Mr. Warren: I object, Your Honor.

A. No, sir.

Mr. Bennett: Q. Do you know of any adverse effect it has had on any parent? Has any parent complained to you because the theory of evolution is not taught in the schools of Greenbriar?

A. No, sir.

Q. Do you know of anybody else in the community who thinks that the absence of that statute has seriously affected the health and welfare and academic standards of the Schools of Greenbriar?

A. No, sir.

The Court: You are going a little too far. He can't testify what somebody else in the community thinks.

Mr. Bennett: Q. Has anybody complained to you as a member of the School Board?

[177] A. No, sir.

Mr. Bennett: That is all.

Mr. Warren: I have no questions.

(Witness excused.)

Mr. Bennett: I thought perhaps Mrs. Epperson's testimony would take a little longer this morning and we have a witness who will be here at 2 o'clock, Mr. Ode Maddox, who is a member of the General Assembly and also Super-

intendent of the Schools at Oden, Arkansas and the record will show that his testimony would be substantially the same as Mr. Herschel Lee's and Mr. McKenzie's and Mr. McMillan's and Mr. James Odell's.

Mr. Warren: I will stipulate.

Mr. Bennett: Also, Mr. Roy Bolin, Superintendent of the Schools at Junction City, Arkansas, whose testimony will be substantially the same.

Mr. Warren: If the gentleman states that, I so stipulate.

[178] HUBERT BLANCHARD,

recalled by the defendants, under the same oath, testified as follows:

Direct Examination,

By Mr. Bennett:

Q. Mr. Blanchard, I believe you said this morning that you were actively in the teaching profession for how many years?

A. 13 years.

Q. As teacher and as superintendent and as principal?

A. That's right.

Q. During those years, did you ever have any parent of any school children in your schools come to you and say the presence of Act No. 1 of 1928 was having an adverse effect upon the school system?

A. I can't say that I have.

Q. Did you have anybody in the community come to you and state it was having an adverse effect?

A. I don't believe so.

Q. Nobody has ever expressed to you the idea that this statute, is unreasonable, on the part of people, have they?

A. Oh, yes, sir.

Mr. Warren: I object. Public interpretation has nothing to do with it.

[179] The Court: He answered your question by saying nobody objected.

Mr. Bennett: That is all.

Mr. Warren: I have nothing further.

(Witness excused.)

[59] **MEMORANDUM OPINION.**

(Formal parts omitted.)

This is an action instituted by the plaintiff, as a citizen and resident of Little Rock, Pulaski County, Arkansas, and as a teacher at Little Rock Central High School, employed by the Directors of the Little Rock School District, seeking a declaratory judgment and injunctive relief. Intervenor, Hubert H. Blanchard, Jr., intervened in the action, seeking a declaratory judgment under the terms of the Arkansas Declaratory Judgment Act (Ark. Stats. 34-2501 through 34-2512).

Both the plaintiff and the intervenor allege that Initiated Act No. 1 of 1928 (Ark. Stats. 80-1627 and 80-1628) is unconstitutional and void because the Act contravenes certain provisions of the Constitution of the United States and the Constitution of the State of Arkansas.

[60] Act No. 1 of 1928 (Ark. Stats. 80-1627 and 80-1628) reads as follows:

> "80-1627. Doctrine of Ascent or Descent of Man From Lower Order of Animals Prohibited.—It shall be unlawful for any teacher or other instructor in any University, College, Normal, Public School, or other institution of the State, which is supported in whole or in part from public funds derived by State and local taxation to teach the theory or doctrine that mankind ascended or descended from a lower order of animals and also it shall be unlawful for any teacher, textbook commission, or other authority exercising the power to select textbooks for above mentioned educational institutions to adopt or use

in any such institution a textbook that teaches the doctrine or theory that mankind deseended or ascended from a lower order of animals."

"80-1628. Teaching Doctrine or Adopting Textbook Mentioning Doctrine—Penalties—Positions to Be Vacated.—Any teacher or other instructor or textbook commissioner who is found guilty of violation of this act (S. S. 80-1627, 80-1628) by teaching the theory or doctrine mentioned in section 1 (S80-1627) hereof, or by using, or adopting any such textbooks in any such [61] educational institution shall be guilty of a misdemeanor and upon conviction shall be fined not exceeding five hundred dollars ($500.00); and upon conviction shall vacate the position thus held in any educational institutions of the character above mentioned or any commission of which he may be a member."

Section 4 of Article 14 of the Constitution of the State of Arkansas reads as follows:

"S4. Supervision of Schools.—The supervision of public schools and the execution of the laws regulating the same shall be vested in and confided to such officers as may be provided for by the General Assembly."

The First Amendment to the Constitution of the United States reads as follows:

"(Religious and Political Freedom.)—Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

Section 1 of the Fourteenth Amendment to the Constitution of the United States reads as follows:

"S1. (Citizenship—Due Process of Law—Equal Protection.)—All persons born or naturalized in [62] the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Let it be understood at the outset that this Court is not unmindful of the public interest in this case, or of the vital concern of many people in what theories may be taught in the schools, colleges and universities of this state.

The engrossing questions relating to the origin of man, the destiny of man, and the creation of the universe have engaged the thoughts and demanded the attention of the world's greatest philosophers, scientists, theologians, and educators. These questions cannot be answered by the enactment of laws or by the decisions of courts.

In view of the fact that many people have apparently misinterpreted the decisions of the United States Supreme Court regarding the teaching of the Bible in the public schools of our Nation, an explanatory statement seems appropriate. [63] Statements are frequently heard such as "the Bible has been banned from the schools" and "the Bible cannot be taught in the schools". Such statements are not consistent with the language in the decisions of the Supreme Court. In the recent case of **Abington School District v. Schempp**, 374 U. S. 203, 10 L. ed. 2nd 844, Mr. Justice Clark, speaking for the Court, made the following statement:

"In addition, it might well be said that one's education is not complete without a study of comparative

religion or the history of religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities. Nothing we have said here indicates that such a study of the Bible or of religion, when presented objectively as a part of a secular program of education, may not be effected consistently with the First Amendment."

Judge Clark's opinion speaks for the majority and its language refutes any contention that the Bible or religion may not be taught in the schools nor studied in the schools.

In a concurring opinion in the same case, Judge Brennan said:

"The holding of the Court today plainly does not foreclose the teaching about the Holy Scriptures or about [64] the differences between religious sects in classes in literature or history. Indeed, whether or not the Bible is involved, it would be impossible to teach meaningfully many subjects in the social sciences or the humanities without some mention of religion. To what extent, and at what points in the curriculum, religious materials should be cited are matters which the courts ought to entrust very largely to the experienced officials who superintend our Nation's public schools. They are experts in such matters, and we are not."

This Court does not interpret the decisions of the United States Supreme Court as prohibiting the teaching of the Bible in the public schools. It is not the teaching of the Bible account of the creation of man contained in the Book of Genesis that is prohibited in the public schools, but it is the conduct of "a religious observation", or "a religious exercise" which the Supreme Court has said the Constitution prohibits. The Supreme Court has

ruled that school boards and officials cannot prescribe and require an official prayer, but this is far from ruling the Bible out of the public schools, statements to the contrary notwithstanding.

Religious practices may be tested or challenged in courts, but religious beliefs or experiences are beyond the competency of courts to prove or disprove. The truth or the [65] fallacy of a scientific theory or doctrine (like a religious doctrine or belief) is not a triable issue in court.

The issue presented for determination in this case is whether or not the statute conflicts with the constitutional provisions securing the rights of freedom of speech, of thought, and expression, and securing the right to teach and the freedom to learn. Whether "the theory or doctrine that mankind ascended or descended from a lower order of animals" is true or false is not the issue presented, and, as above pointed out, is not a triable issue. The truth or the fallacy of arguments on each side of the evolution debate does not either contribute to or diminish the constitutional right of teachers and scientists to advance theories and to discuss them.

Any statute which seeks to limit or restrict the field of inquiry should be carefully and closely examined by the courts. "Teachers and students must always remain free to inquire, to study and to evaluate." **Shelton v. Tucker**, 364 U. S. 479, 5 L. ed. 2nd 231.

The field of science necessarily involves the discussion and evaluation of **speculative theories.** This has been recognized by the Supreme Court of the United States in the following language:

> "For society's good—if understanding be an essential need of society—inquiries into these problems, [66] speculations about them, stimulation in others of re-

flection upon them, must be left as unfettered as possible. Political power must abstain from intrusion into this activity of freedom, pursued in the interest of wise government and people's well-being, except for reasons that are exigent and obviously compelling." Sweezy v. New Hampshire, 354 U. S. 234, 1 L. ed. 2nd 1311.

In view of the testimony of the plaintiff that she does not propose, intend, or desire to teach as a proved and established fact the theory that mankind ascended or descended from a lower order of animals, set out in the textbook adopted by the Little Rock School Administration, this Court can find no "exigent and obviously compelling" reason to prohibit a teacher from presenting and explaining the theory along with other theories or doctrines which a student may accept or reject, even though the theory may be objectionable to many of our citizens. By use of the word "teach" the court accepts the common definition "to make aware of by information or to impart the knowledge of". That this is the meaning of the word "teach" intended by the statute is obvious since the statute forbids any teacher, textbook commission or other authority to adopt "a textbook that teaches the doctrine or theory."

This Court has carefully considered the holding in the **Scopes** case. **Scopes v. State of Tennessee**, 154 Tenn. 105, [67] 289 S. W. 363. It seems that the decision in that case was based principally upon the theory that "In dealing with its own employees engaged upon its own work, the State is not hampered by the limitation . . . of the Fourteenth Amendment to the Constitution of the United States." Counsel for plaintiff and intervenor contend that the Scopes case has been completely overruled while the Attorney General argues that the decision in that case has only been modified. Even if the decision has not been completely overruled by later decisions of

the United States Supreme Court, it is the opinion of this Court that the holding in the Scopes case has been modified and made obsolete to such an extent that it does not apply to the case at bar and that it should not be followed. **Gitlow v. New York,** 268 U. S. 652, 69 L. ed. 1138. **Torcaso v. Watkins,** 367 U. S. 488, 6 L. ed. 2nd 982. **Beilan v. Board of Education,** 357 U. S. 399, 2 L. ed. 2nd 1414.

The Fourteenth Amendment to the United States Constitution encompasses the first ten amendments to the Constitution and the guarantees therein contained. A state may not extinguish the freedoms guaranteed by the Constitution arbitrarily or unreasonably even in the exercise of the police power. Whether a statute is wise or unwise is not for the courts to say, but whether it is reasonable or unreasonable is for the courts to determine. The decision of the United States Supreme Court [68] in the case of **Bartels v. Iowa,** 262 U. S. 403, 67 L. ed. 1047, appears to be in point. In that case the state had enacted a statute forbidding the teaching of foreign languages in the public schools. This statute followed the first World War and it was presumed that the German language was not popular with a majority of the citizens of the state. Nevertheless, the United States Supreme Court held that such an act was arbitrary and unreasonable.

This Court is of the opinion that Act No. 1 of 1928 (Ark. Stats. 80-1627 and 80-1628) tends to hinder the quest for knowledge, restrict the freedom to learn, and restrain the freedom to teach, and that a chapter in a biology book, adopted by the school administrative authorities, stating that a specific theory has been advanced by an individual that man ascended or descended from a lower form of animal life, does not constitute such a hazard to the safety, health and morals of the community that the constitutional freedoms may justifiably be sup-

pressed by the state. If it should be held that the teaching of such a theory does constitute such a hazard, then the statute in question obviously fails to protect the student in a private school from the hazard and thus denies the equal protection of the law.

Many people do not agree with the decisions of the United States Supreme Court. Others will agree with them. But it is the duty and responsibility of trial courts to follow the [69] decisions of the Supreme Court even when we may not agree with them, if we are going to maintain our constitutional principles. This Court is not unmindful of the general rule that statutes should not be held unconstitutional where constitutionality is subject to doubt. In the Court's opinion the unconstitutionality of the statute under consideration is not subject to doubt, irrespective of the motives of those who secured its passage.

Therefore, it is the opinion and ruling of this Court that a decree be entered declaring Initiated Act No. 1 of 1928 (Ark. Stats. 80-1627 and 80-1628) unconstitutional and void, and that the defendants have no authority to proceed under the act or to enforce the provisions thereof.

No testimony was offered or showing made in this action that the defendants, as Directors and Superintendent of the Little Rock School District, have threatened or have indicated any intention to dismiss plaintiff from her teaching position, or to cancel her contract to teach in the public schools of Little Rock. Counsel for the Directors of the Little Rock School District and the Superintendent of Schools, who are defendants in this case, announced in open court that the School Board and the school officials would follow the decree of this Court. In view of that statement the Court deems it [70] unnecessary to issue an injunction at this time in aid of the declaratory judgment. However, if an effort is made

in future to enforce the statute an injunction would be appropriate.

Counsel for plaintiff and intervenor will prepare a precedent for decree consistent with this opinion and submit the precedent to opposing counsel for approval as to form and then to this Court for consideration and signature.

/s/ MURRAY O. REED,
MURRAY O. REED, Chancellor.

Date 5-27-66.

[71] **DECREE.**

(Formal parts omitted.)

This cause is this day submitted to the Court for its consideration and decree. The plaintiff and intervenor were represented by their attorney, Eugene R. Warren, Esq., the defendants by their attorney, Herschel H. Friday, Jr., Esq. and the State of Arkansas by its attorneys Honorable Bruce Bennett, Attorney General and Honorable Fletcher Jackson, Assistant Attorney General. The cause was submitted to the Court upon the complaint of the plaintiff, the intervention of the intervenor, the answer of the defendant and the answer of the State of Arkansas and upon testimony of witnesses for both the plaintiff and the intervenor and the State of Arkansas and documentary evidence, from all of which the Court finds:

[72] 1. Initiated Act No. 1 of 1928 (Ark. Stat. 80-1627 and 80-1628) is unconstitutional and void.

2. It is unnecessary that an injunction be issued at this time in aid of this declaratory judgment. The Court should, however, retain jurisdiction of the cause to issue an injunction if any effort is made in the future to enforce said unconstitutional and void statute.

It Is Therefore, Considered, Ordered, Adjudged, and Decreed that Initiated Act No. 1 of 1928 is hereby declared unconstitutional and void. The Court retains jurisdiction of this cause to issue such orders as may be necessary in aid of this declaratory judgment. The memorandum opinion heretofore issued by the Court is made a part of this decree. Each party, hereto, shall bear his respective cost herein expended.

/s/ MURRAY O. REED,
Judge.

Date: 6-16-66.

Approved: Eugene R. Warren, for Plaintiff.

Approved: Fletcher Jackson, for State.

Approved: Herschel H. Friday for Defendants.

[73] **NOTICE OF APPEAL AND DESIGNATION OF RECORD.**

(Formal parts omitted.)

Comes the State of Arkansas by the Attorney General of Arkansas, and hereby gives notice of its appeal to the Supreme Court of Arkansas from the decree entered herein on June 16, 1966; and designates for inclusion in the record on appeal the entire record herein.

BRUCE BENNETT,
Attorney General,
/s/ FLETCHER JACKSON,
By: FLETCHER JACKSON,
Assistant Attorney General.

[182] SUPREME COURT OF ARKANSAS.

No. 5-4127.

Opinion Delivered June 5, 1967.

STATE OF ARKANSAS, Appellant, v. SUSAN EPPERSON and H. H. BLANCHARD, Appellees. | Appeal from Pulaski Chancery Court, First Division. | Reversed and Dismissed.

PER CURIAM.

Upon the principal issue, that of constitutionality, the court holds that Initiated Measure No. 1 of 1928, Ark. Stat. Ann., § 80-1627 and § 80-1628 (Repl. 1960), is a valid exercise of the state's power to specify the curriculum in its public schools. The court expresses no opinion on the question whether the Act prohibits any explanation of the theory of evolution or merely prohibits teaching that the theory is true; the answer not being necessary to a decision in the case, and the issue not having been raised.

The decree is reversed and the cause dismissed.

Ward, J., concurs. Brown, J., dissents.

[183] **CONCURRENCE.**

Opinion Delivered 6-5-67.

I agree with the first sentence in the majority opinion.

To my mind, the rest of the opinion beclouds the clear announcement made in the first sentence.

PAUL WARD,
Associate Justice.

[184] **JUDGMENT.**

(Caption omitted.)

This cause came on to be heard upon the transcript of the record of the Chancery court of Pulaski County, First Div., and was argued by counsel; on consideration whereof it is the opinion of the Court that there is error in the proceedings and decree of said Chancery Court in this cause as set out in the opinion herein delivered.

It is therefore ordered and decreed by the Court that the decree of said Chancery court in this cause rendered be, and the same is hereby reversed and the cause dismissed.

It is further considered that said Appellant recover of said appellee all his costs in this Court, in this cause expended, and have execution thereof.

Ward, J., concurs.

Brown, J., dissents.

[185] **APPELLEES' PETITION FOR RE-HEARING AND BRIEF IN SUPPORT THEREOF.**

(Formal parts omitted.)

[186] **Petition for Re-Hearing.**

Come the appellees and pray that this Court grant a re-hearing in this case, respectfully submitting that the Court erred in the following particulars:

1. The Court erred in failing and refusing to declare Initiated Measure No. 1 of 1928, Arkansas Statutes, Sec. 80-1627 and 80-1628 unconstitutional and void as being in direct conflict with the protections granted the appellees under the specific language of the First Amendment to the Constitution of the United States.

2. The Court erred in failing and refusing to declare that the Initiated Act No. 1 of 1928 was void because it conflicts with the equal protection of the laws clause contained in Amendment 14 to the Constitution of the United States.

3. The Court erred in failing and refusing to declare that Initiated Act No. 1 was unconstitutional and void in that it is so vague and indefinite as to conflict with the [187] due process clause of Amendment 14 to the Constitution of the United States.

4. The Court erred in failing and refusing to declare that Initiated Act No. 1 was unconstitutional and void in that it was arbitrary and capricious and in conflict with the due process clause of the Constitution of the United States.

5. The Court erred in failing and refusing to declare Initiated Act No. 1 unconstitutional and void in that it conflicted with the provisions of Amendment 1 of the Constitution of the United States guaranteeing the freedom of religion.

Wherefore, Appellees pray that this Honorable Court grant a rehearing herein and affirm the judgment of the lower Court heretofore entered.

[188] **Brief in Support of Petition for Re-Hearing.**

The Court has stated in its *Per Curiam* order that Initiated Act No. 1 is a valid exercise of the State's power to specify the curriculum in its public schools. We do not challenge the right of the State to establish the curriculum to be taught in the public schools. The establishment of a curriculum for what must be taught is entirely separate and distinct from an arbitrary prohibition against the teaching of a commonly taught theory in the field of

science. It is not by the specification of a curriculum in which we assert the State has acted unconstitutionally, but the arbitrary prohibition seeking to restrict the manner of teaching of one of the science subjects. This presently discussed Act does not attempt to specify a curriculum. It does not say what shall be taught; it says what can not be taught. In **Meyer v. Nebraska**, 262 U. S. 390, 67 L. Ed. 1042, 43 Sup. Ct. Rep. 625, at issue was the constitutionality of a statute of the State of Nebraska which prohibited the teaching of "any subject to any person . . . in any language other than the English language." The statute was attacked as violative of the Constitution of the United States, particularly the 14th Amendment. In holding the statute unconstitutional the United States Supreme Court said:

> "The power of the State to compel attendance at some school and to make reasonable regulations for all schools, including a requirement [189] that they shall be given instructions in English, is not questioned. Nor has challenge been made of the State's power to prescribe a curriculum for institutions which it supports. Those are matters not within the present controversy. Our concern is with the prohibition approved by the Supreme Court."

Certainly a State may provide that nothing can be taught in the public schools which is "manifestly inimical to the public welfare". **Pierce v. Society of Sisters of Holy Names**, 268 U. S. 510, 69 L. Ed. 1071. This Court has not said that knowledge of the theory of evolution is "manifestly inimical to the public welfare", and it should not permit its *Per Curiam* order to be so interpreted. In all fairness to teachers and students it should answer the principal question herein involved, viz: "Is knowledge that there is a theory of evolution so potentially harmful to a student that imparting such knowledge in the class-

room may be prohibited under pain of criminal conviction."

The Court has evidently not considered this case from the standpoint of the student. Both parents and the students' rights are effectively involved in this case through the intervention of H. H. Blanchard on behalf of himself and his children and all others similarly situated. The freedom of speech guaranty in the First Amendment to the Constitution of the United States is also a guaranty of the freedom to learn. The Blanchard children have a constitutionally guaranteed right to access to all available scientific knowledge, be it theory or fact, and this right [190] to learn is not subject to the whim of the majority by the exercise of their vote. Misguided ignorance may not constitutionally suppress the quest for knowledge even though suppression is accomplished through the power of the poll. "The First Amendment gives freedom of mind the same security as freedom of conscience." **Thomas v. Collins**, 323 U. S. 516, 89 L. Ed. 430.

At the trial of this case the suggestion was advanced by the Attorney General that the Blanchard children could go somewhere else and learn this theory. It does not meet constitutional requirements to say to one held in intellectual slavery: "Go somewhere else and you can be free." The freedom to learn, secured by the constitution, means freedom in one's native State, not access to freedom in a more enlightened political climate.

In the **Meyer** case, *supra*, Mr. Justice McReynolds stated:

> "Evidently the' legislature has attempted materially to interfere with the calling of modern language teachers, with the opportunities of pupils to acquire knowledge, and with the power of parents to control the education of their own."

The presently discussed Act interferes with the calling of biology teachers. It clearly discriminates against biology teachers in public schools as distinguished from biology teachers in private schools. It deprives Mrs. Epperson and other science teachers of the right to carry out her duties in a proper manner; in short, it unduly restrains her calling.

[191] We shall not attempt to restate our original argument that Act No. 1 is so vague and indefinite as to conflict with the "due process" clause of the 14th Amendment to the Constitution of the United States. Evidently this Court found that the Act was not definite in application since the second sentence of the Court's *per curiam* order stated that the Court expressed no opinion on the question whether the Act prohibited teaching that the theory is true. Traditional concepts of teaching are thus made inharmonious, if not divorced. In so stating its own position of indecision, the Court has tremendously complicated the problem as respects the school teacher. Is there a difference between "explaining" a theory in a classroom and "teaching" a theory? Eminent educators to whom we have turned in our effort to understand this second sentence tell us there is no way to determine when a teacher in a classroom stops "teaching" and starts "explaining", or when a teacher stops "explaining" and starts "teaching". Indeed, classroom discussion and explanation by the teacher is one of the essential elements of teaching. It is respectfully urged that this Court clarify its second sentence or eliminate it entirely from the decision.

In the Meyer case, *supra*, the Court held that the Nebraska statute prohibiting the teaching of a foreign language was arbitrary and therefore unconstitutional under [192] the provisions of the 14th Amendment to the Constitution of the United States. The Court said:

> "Mere knowledge of the German language cannot reasonably be regarded as being harmful."

Specifically, the holding of the Court in **Meyer** is stated:

> "We are constrained to conclude that the statute as applied is arbitrary, and without reasonable relation to any end within the competency of the State."

The brevity of this Honorable Court's opinion has deprived us of any clue as to findings by the Court. Surely this Court does not mean to hold that mere knowledge of the existence of a theory of evolution can reasonably be regarded as harmful. This Honorable Court's opinion can rest upon only one of two conclusions: either this Court must have held that the State's power over the public schools is immune from constitutional requirements and guarantees, or that mere knowledge of the existence of the theory of evolution can reasonably be regarded as harmful and is inimical to the public welfare. As to the first premise, **Meyer v. Nebraska**, *supra*, and subsequent decisions of the United States Supreme Court demonstrate conclusively that such a premise is absolutely erroneous. As to the second premise, this Court, if it so concluded, owes a duty to the teaching profession to so announce.

In **Meyer**, *supra*, the opinion stated that the liberty secured and guaranteed to the individual by the due process clause of the 14th Amendment included the right "to acquire [193] useful knowledge" The Court further stated that the established doctrine of the United States Supreme Court is that this liberty may not be interfered with under the guise of protecting the public interest by arbitrary legislation. The Court further stated with reference to that plaintiff, a school teacher, that "his right to teach and the right of parents to engage him so to instruct their children, we think, are within the liberty of the Amendment".

It is respectfully submitted that this Court should enter its order granting rehearing in this cause, and that upon said rehearing the decree of the Chancery Court should be affirmed.

Respectfully submitted,

WARREN and BULLION,
Tower Building,
Little Rock, Arkansas,

By: .....
EUGENE R. WARREN,
Attorneys for Appellees.

[194] **ORDER DENYING PETITION FOR REHEARING.**

(Caption omitted.)

Petition for rehearing is denied.

[184-A] **NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES.**

(Formal parts omitted.)

I. Notice is hereby given that Susan Epperson and H. H. Blanchard, the plaintiff and intervenor in the lower court (Pulaski County Chancery Court, First Division), and appellees in the Supreme Court of Arkansas, hereby appeal to the Supreme Court of the United States from the Order of the Supreme Court of Arkansas, dated the 5th day of June, 1967, reversing and dismissing the complaint and intervention of said parties, and the final Order of the Supreme Court of Arkansas, dated the 26th day of July, 1967, denying to plaintiff and intervenor their petition to rehear the said judgment, aforesaid.

This appeal is taken pursuant to 28 U. S. C. Section 1257 (2).

II. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. The entire transcript of the record of the lower court proceedings, including all pleadings, motions, orders, written opinions, notices, designations, oral testimony of witnesses, exhibits, and decree, and including all motions, orders, judgments, opinions, and proceedings of record in the Supreme Court of Arkansas, it being the intention hereof to include all matters, proceedings, orders, evidence in this cause from the date of its inception in the lower court up to and including the order of the Supreme Court of Arkansas denying and refusing the Petition of appellants for Rehearing, and including this Notice [184-B] and all other appeal documents to the Supreme Court of the United States.

III. The following questions are presented by this appeal:

1. Do the Arkansas anti-evolution laws (Ark. Stats. Secs. 80-1627 and 80-1628) violate the First Amendment to the Constitution of the United States by denying to appellants the rights of freedom of speech, of thought and expression, and the right to teach and the freedom to learn.

2. Do the Arkansas anti-evolution laws, supra, violate the Fourteenth Amendment to the Constitution of the United States, if they are construed to fall into the category of permissible police legislation which would warrant the extinguishment of the freedom of speech and the freedom to learn, in that they

deny to appellants the equal protection of the laws by its limited applicability to "tax supported" schools.

3. Do the Arkansas anti-evolution laws, supra, violate the due process clause of the Fourteenth Amendment to the Constitution of the United States by defining as a crime, in vague and indefinite terms, "to teach the theory".

4. Do the Arkansas anti-evolution laws, supra, violate Amendment One to the Constitution of the United States by denying to appellants their guaranteed freedom of religion.

/s/ EUGENE R. WARREN,
EUGENE R. WARREN,
Attorney for Susan Epperson and
H. H. Blanchard, Appellants.